

VERBATIM ¹RECORD OF TRIAL ²

(and accompanying papers)

of

MANNING, Bradley E.

(Name: Last, First, Middle Initial)

Headquarters and
Headquarters Company,United States Army Garrison

(Unit/Command Name)

(Social Security Number)

U.S. Army

(Branch of Service)

PFC/E-3

(Rank)

Fort Myer, VA 22211

(Station or Ship)

By

GENERALCOURT-MARTIAL

Convened by

Commander

(Title of Convening Authority)

UNITED STATES ARMY MILITARY DISTRICT OF WASHINGTON

(Unit/Command of Convening Authority)

Tried at

Fort Meade, MD

(Place or Places of Trial)

on

see below

(Date or Dates of Trial)

Date or Dates of Trial:

23 February 2012, 15-16 March 2012, 24-26 April 2012, 6-8 June 2012, 25 June 2012, 16-19 July 2012, 28-30 August 2012, 2 October 2012, 12 October 2012, 17-18 October 2012, 7-8 November 2012, 27 November - 2 December 2012, 5-7 December 2012, 10-11 December 2012, 8-9 January 2013, 16 January 2013, 26 February - 1 March 2013, 8 March 2013, 10 April 2013, 7-8 May 2013, 21 May 2013, 3-5 June 2013, 10-12 June 2013, 17-18 June 2013, 25-28 June 2013, 1-2 July 2013, 8-10 July 2013, 15 July 2013, 18-19 July 2013, 25-26 July 2013, 28 July - 2 August 2013, 5-9 August 2013, 12-14 August 2013, 16 August 2013, and 19-21 August 2013.

¹ Insert "verbatim" or "summarized" as appropriate. (This form will be used by the Army and Navy for verbatim records of trial only.)

² See inside back cover for instructions as to preparation and arrangement.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

06KUWAIT4430 is an official telegram from Embassy Kuwait, dated November 10, 2006 to the Department of State. Five pages. The telegram was properly classified CONFIDENTIAL in part under E.O. 12958 at the time it was generated. Portions of the telegram remain CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b) and (d).

IMPACT OF RELEASE

The still-exempted portions describe the Embassy's assessment of rumors of the dissolution of parliament and new elections. It draws on conversations with various Kuwaiti officials and politicians, who spoke to U.S. diplomats in the expectation of confidentiality. Unauthorized disclosure of the classified material would cause harm to the Embassy's relations with both the Government of Kuwait and Kuwaiti politicians, and diminish their willingness to conduct confidential exchanges with U.S. officials in the future.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

06KUWAIT4438 is an official telegram from Embassy Kuwait, dated November 12, 2006 to the Department of State. Five pages. The telegram was properly classified CONFIDENTIAL in part under E.O. 12958 at the time it was generated. Portions of the telegram remain CONFIDENTIAL under E.O. 13526 under Section 1.4(d).

IMPACT OF RELEASE

The exempted portions are part of a discussion between a U.S. and a Kuwaiti official on economic matters, especially a still-sensitive question concerning other parties in the region. The conversation was conducted in the expectation of confidentiality on both sides. Unauthorized disclosure of the exempted material would cause harm to relations with the Government of Kuwait and diminish its officials' willingness to conduct confidential diplomatic business with U.S. officials.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

06MADRID2955 is an official telegram from Embassy Madrid, dated November 27, 2006 to the Department of State. Three pages. The telegram was properly classified CONFIDENTIAL under E.O. 12958 at the time it was generated. The telegram remains CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b)(d).

IMPACT OF RELEASE

The telegram reports the Deputy Chief of Mission's private conversation with a senior Spanish official about a territorial dispute in another country. The telegram also reports a remark on the same topic that an even more senior Spanish official made to a visiting American diplomat in a confidential setting. The dispute in question has implications for the territorial

integrity of Spain, making it a particularly sensitive issue in Spanish politics. Unauthorized disclosure of the classified material specified above would cause harm to relations with the Government of Spain and diminish the willingness of Spanish and other officials to conduct confidential diplomatic business with U.S. representatives.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

06MADRID2956 is an official telegram from Embassy Madrid, dated November 27, 2006 to the Department of State. Three pages. The telegram was properly classified CONFIDENTIAL under E.O. 12958 at the time it was generated. The telegram remains CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b)(d).

IMPACT OF RELEASE

The telegram reports a private conversation between the Deputy Chief of Mission and a senior Spanish official about the prospects for admitting another country to the European Union (EU). The Spanish official comments on the attitudes of other EU members on the issue. Unauthorized disclosure of the classified material specified above would cause harm to relations with the Government of Spain and diminish the willingness of Spanish and other officials to conduct confidential diplomatic business with U.S. representatives.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

06PRISTINA947 is an official telegram from U.S. Office Pristina, dated November 11, 2006 to the Department of State. Six pages. The telegram was properly classified CONFIDENTIAL in part under E.O. 12958 at the time it was generated. Portions of the telegram remain CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b)(d).

IMPACT OF RELEASE

The telegram concerns plans for the departure of the United Nations Mission in Kosovo. Classified portions report confidential criticisms from named sources about the performance of an international organization and a government ministry and its chief. Unauthorized disclosure of the classified material specified above would diminish the willingness of officials from foreign governments and international organizations to speak frankly with U.S. representatives.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

06PRISTINA948 is an official telegram from U.S. Office Pristina, dated November 11, 2006 to the Department of State. Five pages. The telegram was properly classified CONFIDENTIAL under E.O. 12958 at the time it was generated. Portions of the telegram remain CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b)(d).

IMPACT OF RELEASE

The telegram concerns plans for refugee movements after a decision on Kosovo's final status. Classified portions contain critical comments about the performance of international agencies, some of them offered in the expectation of confidentiality by a named foreign official and some made by U.S. Office Pristina itself. Unauthorized disclosure of the classified material specified above would cause harm to relations with international organizations and diminish the willingness of officials from international organizations and foreign governments to share their views with U.S. representatives.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

06RIYADH8811 is an official telegram from Embassy Riyadh, dated November 11, 2006 to the Department of State. Six pages. The telegram was properly classified SECRET under E.O. 12958 at the time it was generated. The telegram remains SECRET under E.O. 13526 under Sections 1.4 (a), (b) and (d).

IMPACT OF RELEASE

The document reports highly sensitive conversations between U.S. Embassy officials and visiting U.S. military officials on the one side, and senior Saudi officials on the other. The discussions, which involved very delicate political and material matters, were conducted in the expectation of total secrecy. Unauthorized disclosure of the contents would cause serious harm to relations with the Government of the Kingdom of Saudi Arabia and seriously diminish its officials' willingness to conduct sensitive diplomatic and security business with U.S. officials.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

06SEOUL3882 is an official telegram from Embassy Seoul, dated November 10, 2006 to the Department of State. Three pages. The telegram was properly classified SECRET under E.O. 12958 at the time it was generated. Portions of the telegram remain SECRET under E.O. 13526 under Sections 1.4 (b)(d).

IMPACT OF RELEASE

Those classified portions describe the U.S. Charge d' Affairs' diplomatic exchanges with a senior foreign ministry official of the Government of the Republic of Korea concerning the Proliferation Security Initiative (PSI), a global anti-proliferation effort aimed at stopping the trafficking of weapons of mass destruction, their delivery systems and related materials. This effort is particularly important as it relates to North Korea. The PSI is highly controversial in the Republic of Korea and unauthorized disclosure of the classified material could be seized upon by opposition elements to undermine supporters of the effort. In addition, compromise of this diplomatic exchange would cause harm to U.S. relations with the Government of the Republic of

Korea and discourage its officials from conducting highly sensitive diplomatic business with U.S. officials in the future.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

06SEOUL3885 is an official telegram from Embassy Seoul, dated November 12, 2006 to the Department of State. Five pages. The telegram was properly classified CONFIDENTIAL under E.O. 12958 at the time it was generated. Portions of the telegram remain CONFIDENTIAL under E.O. 13526 under Sections (b)(d).

IMPACT OF RELEASE

The classified portions describe a discussion between a senior South Korean political figure and U.S. diplomatic officials covering a broad range of highly sensitive topics including the U.S. - Republic of Korea Alliance, North Korea and the Six Party Talks and domestic political developments. Unauthorized disclosure of the classified material specified above would cause embarrassment and harm to this highly prominent politician and diminish the willingness of other Korean officials to discuss confidential sensitive subjects with U.S. officials in the future. Unauthorized disclosure of the classified material specified above would also cause harm to relations with the Government of the Republic of Korea and diminish its officials' willingness to conduct confidential diplomatic business with U.S. officials.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

06SUVA489 is an official telegram from Embassy Suva, dated November 12, 2006 to the Department of State. Six pages. The telegram was properly classified CONFIDENTIAL in part under E.O. 12958 at the time it was generated. Portions of the telegram remain CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b)(d).

IMPACT OF RELEASE

The classified portions describe the embassy's assessment of a civil-military crisis in which Fiji's Military Forces Commander is pitted against the country's Prime Minister. Detailed comments from prominent local sources on the growing confrontation are also reported. Unauthorized disclosure of the classified material would cause harm to U.S. relations with the local authorities and injure the reputation of embassy sources resulting in an unwillingness of these and other sources to meet with U.S. officials in the future.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

06TAIPEI3830 is a telegram from the American Institute Taiwan (AIT), Taipei, dated November 12, 2006 to the Department of State. Two pages. The telegram was properly classified SECRET under E.O. 12958 at the time it was generated. Portions of the telegram remain SECRET under E.O. 13526 under Sections 1.4 (b)(d).

IMPACT OF RELEASE

This telegram describes an AIT officer's confidential discussion with an export control authority in Taiwan concerning UN Security Council Resolution 1718, which imposed economic and commercial sanctions on North Korea in the aftermath of that nation's claimed nuclear test of October 9, 2006. Unauthorized disclosure of the classified material would cause harm to U.S. relations with the authorities in Taiwan and diminish Taiwan officers' willingness to conduct confidential business with the American Institute in Taiwan in the future.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

06TRIPOLI645 is an official telegram from Embassy Tripoli, dated November 10, 2006 to the Department of State. Three pages. The telegram was properly classified CONFIDENTIAL in part under E.O. 12958 at the time it was generated. Portions of the telegram remain CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b) and (d).

IMPACT OF RELEASE

The exempted portions describe a conversation between an Embassy officer and a representative of the Libyan Ministry of Foreign Affairs called at the behest of that Ministry. The purpose was to convey Libya's views on a regional issue, and the Government of Libya had every expectation to believe that the United States Government would treat the subject and the details of the discussion as confidential. Unauthorized disclosure of the classified material specified above would cause harm to relations with the Government of Libya - present or future - and diminish its officials' willingness to conduct confidential diplomatic business with U.S. officials. It would also be seen by other states, particularly those in the region, of a lapse in U.S. ability to maintain confidentiality in its diplomatic exchanges.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

06TRIPOLI648 is an official telegram from Embassy Tripoli, dated November 10, 2006 to the Department of State. Four pages. The telegram was properly classified CONFIDENTIAL in part under E.O. 12958 at the time it was generated. Portions of the telegram remain CONFIDENTIAL under E.O. 13526 under Section 1.4(d).

IMPACT OF RELEASE

Those portions contain the Embassy's candid analysis of the Libyan central bank's attempts to enlist our help in setting up a training program. Unauthorized disclosure of the exempted material would cause harm to relations with the Government of Libya - present or future - and diminish its officials' willingness to conduct discuss matters in private with U.S. officials.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

07ADDISABABA2197 is an official telegram from Embassy Addis Ababa, dated July 13, 2007 to the Department of State. Seven pages. The telegram was properly classified CONFIDENTIAL in part under E.O. 12958 at the time it was generated. Portions remain CONFIDENTIAL under E.O. 13526 under Section 1.4 (d).

IMPACT OF RELEASE

It reports a conversation with an NGO source who was speaking in confidence with U.S. officials about sensitive matters in a zone of ongoing insurgency. He may have been speaking without the consent of his organization. Unauthorized disclosure of the classified material specified above would cause serious harm to the individual and inhibit his and his organization's ability to function in countries throughout the entire region. This in turn could have negative impact on the ability of U.S. officials to communicate with non-government individuals.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

07ANKARA23 is an official telegram from Embassy Ankara, dated January 8, 2007 to the Department of State. Three pages. The telegram was classified CONFIDENTIAL under E.O. 12958 at the time it was generated. A portion of the telegram remains CONFIDENTIAL under E.O. 13526 under Section 1.4 (d).

IMPACT OF RELEASE

The telegram concerns Turkish impatience with American efforts to counter the Kurdish Workers' Party (PKK), which is engaged in armed struggle with the Government of Turkey. The classified portion contains the Embassy's speculation about internal pressures within the Turkish government. Unauthorized disclosure of the classified material specified above would cause harm to relations with the Government of Turkey.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

07ANKARA2468 is an official telegram from Embassy Ankara, dated October 4, 2007 to the Department of State. Five pages. The telegram was properly classified CONFIDENTIAL in part under E.O. 12958 at the time it was generated. Portions of the telegram remain CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b)(d).

IMPACT OF RELEASE

The telegram assesses the prospects for political reform in Turkey. Classified portions contain assessments of political reform that official, non-official, and diplomatic sources, some named and others identifiable, provided in confidence to Embassy staff. One portion contains the Embassy's own assessment of the situation. Unauthorized disclosure of the classified material specified above would subject some Embassy sources to retribution and would, in

general, diminish the willingness of sources to share their views with U.S. officials. Unauthorized disclosure of the Embassy's views on the sensitive domestic issue of political reform would damage relations with Turkey.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

07ASHGABAT1359 is an official telegram from Embassy Ashgabat, dated December 14, 2007 to the Department of State. Five pages. The telegram was properly classified CONFIDENTIAL under E.O. 12958 at the time it was generated. Portions of the telegram remain CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b)(d).

IMPACT OF RELEASE

The telegram reports the account given to the U.S. Ambassador by the Russian Ambassador in Turkmenistan about a recent high level Russian-Turkmen visit which resulted in a gas export agreement and other publicly announced topics. The portions remaining CONFIDENTIAL are the Russian Ambassador's explanations about the details of the Russian-Turkmen arrangements, his rather extraordinary interpretation of U.S. policy in the region and of Turkmenistan's relations with the Chinese and other governments in the region. They also relay the Embassy's frank comments about the Russian's expressed views. Unauthorized disclosure of the classified material specified above would cause harm to relations with the Russian and the Turkmen governments and diminish their officials' willingness to conduct confidential diplomatic business with U.S. officials.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

07BAGHDAD35 is an official telegram from Embassy Baghdad, dated January 5, 2007 to the Department of State. Four pages. The telegram was properly classified SECRET under E.O. 12958 at the time it was generated. The telegram remains SECRET under E.O. 13526 under Section 1.4 (d).

IMPACT OF RELEASE

The document transmits the Embassy's analysis of a still-delicate internal political situation in the country. It contains candid assessments of the motives and performance of senior Iraqi officials, some still in power. Unauthorized disclosure of the classified material specified above would cause serious harm to relations with the Government of Iraq and diminish its officials' willingness to discuss delicate political matters with U.S. officials.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

07BAGHDAD36 is an official telegram from Embassy Baghdad, dated January 5, 2007 to the Department of State. Four pages. The telegram was properly classified SECRET under

E.O. 12958 at the time it was generated. The telegram remains SECRET under E.O. 13526 under Sections 1.4 (b)(d).

IMPACT OF RELEASE

The telegram contains the Embassy's report of a conversation between the Ambassador and a highly placed Iraqi government official on sensitive internal and bilateral matters. The conversation was conducted in the expectation of strict confidentiality. Unauthorized disclosure of the contents would cause serious harm to relations with the Government of Iraq and diminish its officials' willingness to discuss delicate political and security matters with U.S. officials.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

07BAGHDAD37 is an official telegram from Embassy Baghdad, dated January 5, 2007 to the Department of State. Seven pages. The telegram was properly classified SECRET under E.O. 12958 at the time it was generated. The telegram remains SECRET under E.O. 13526 under Sections 1.4 (b) and (d).

IMPACT OF RELEASE

The document contains the Embassy's report of a meeting between a very senior visiting U.S. officials and senior Iraqi political and government persons on sensitive internal and bilateral matters. Several of the Iraqi participants are still in their respective positions. The conversation was conducted in the expectation of strict confidentiality on the Iraqi side. Unauthorized disclosure of the classified material specified above would cause serious harm to relations with both the Government of Iraq and Iraqi political figures, and diminish their willingness to discuss delicate political and security matters with U.S. officials.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

07BAGHDAD42 is an official telegram from Embassy Baghdad, dated January 7, 2007 to the Department of State. Four pages. The telegram was properly classified SECRET under E.O. 12958 at the time it was generated. The telegram remains SECRET under E.O. 13526 under Sections 1.4 (b)(d).

IMPACT OF RELEASE

The telegram contains the Embassy's report and analysis of an internal security situation and the Government of Iraq's efforts to deal with it. It refers to conversations with Iraqi officials, some of whom senior and still serving, conducted in candor and the expectation of strict confidentiality. Unauthorized disclosure of the classified material specified above would cause serious harm to relations with the Government of Iraq and diminish its officials' willingness to discuss delicate political and security matters with U.S. officials.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

07BAGHDAD53 is an official telegram from Embassy Baghdad, dated January 7, 2007 to the Department of State. Three pages. The telegram was properly classified CONFIDENTIAL under E.O. 12958 at the time it was generated. The telegram remains CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b) and (d).

IMPACT OF RELEASE

The document contains the Embassy's report of a candid conversation on internal political and security matters with a senior Iraqi official, who is still serving, conducted in the expectation of confidentiality. Unauthorized disclosure of the classified material specified above would cause harm to relations with the individual and the Government of Iraq, and diminish its officials' willingness to discuss political and security matters with U.S. officials.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

07BAGHDAD56 is an official telegram from Embassy Baghdad, dated January 7, 2007 to the Department of State. Four pages. The telegram was properly classified CONFIDENTIAL in part under E.O. 12958 at the time it was generated. The telegram remains CONFIDENTIAL under E.O. 13526 under Section 1.4 (d).

IMPACT OF RELEASE

Exempted portions contain the Embassy's sometimes critical assessment of the political and security situation in a province in Iraq. It includes quotes from local political leaders who were speaking in confidence to U.S. officials. Unauthorized disclosure of the classified material specified above would cause harm to relations with the Government of Iraq and with political leaders. Revelation would diminish those persons' willingness to discuss political and security matters with U.S. officials.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

07BAGHDAD63 is an official telegram from Embassy Baghdad, dated January 7, 2007 to the Department of State. Six pages. The telegram was properly classified SECRET under E.O. 12958 at the time it was generated. The telegram remains SECRET under E.O. 13526 under Sections 1.4 (b) and (d).

IMPACT OF RELEASE

The document contains the Embassy's report of a sensitive conversation on internal political and regional and security matters between the Ambassador and a senior Iraqi official, who also represents a minority faction. It was held in the expectation of confidentiality. Unauthorized disclosure of the classified material specified above would cause serious harm to

relations with Iraqi leaders and officials and diminish their willingness to discuss political and security matters with U.S. officials.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

07BAGHDAD64 is an official telegram from Embassy Baghdad, dated January 7, 2007 to the Department of State. Five pages. The telegram was properly classified CONFIDENTIAL under E.O. 12958 at the time it was generated.

IMPACT OF RELEASE

Department of State equities are no longer sensitive; but release would require Department of Treasury concurrence.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

07BAGHDAD70 is an official telegram from Embassy Baghdad, dated January 8, 2007 to the Department of State. Four pages. The telegram was properly classified CONFIDENTIAL under E.O. 12958 at the time it was generated. The telegram remains CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b) and (d).

IMPACT OF RELEASE

The document contains the Embassy's report of a conversation on internal political and security matters with a very senior Iraqi official, who is still serving, conducted in the expectation of confidentiality. Unauthorized disclosure of the classified material specified above would cause harm to relations with the Government of Iraq and diminish its officials' willingness to discuss political and security matters with U.S. officials.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

07BANGKOK111 is an official telegram from the Embassy in Bangkok, dated January 8, 2007 to the Department of State. Three pages. The telegram was properly classified CONFIDENTIAL under E.O. 12958 at the time it was generated. The telegram remains CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b)(d).

IMPACT OF RELEASE

This telegram describes the U.S. Ambassador's confidential conversations with senior Thai government officials concerning serious Thai domestic difficulties. Unauthorized disclosure of the classified material specified above would result in serious embarrassment to the senior Thai officials mentioned and would be seized on by some local critics as heavy-handed U.S. interference in Thai internal affairs. Such a revelation would cause overall harm to U.S. relations with the Government of Thailand and would lessen U.S. effectiveness in our effort to ameliorate future problems.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

07BASRAH3 is an official telegram from Embassy Office Basrah, dated January 5, 2007 to the Department of State. Three pages. The telegram was properly classified SECRET in part under E.O. 12958 at the time it was generated. Portions remain SECRET under E.O. 13526 under Sections 1.4 (b) and (d).

IMPACT OF RELEASE

The document is a report of a kidnapping of an American citizen in Basrah and the exempted passages include candid commentary on the background of the case, as well as information provided in confidence by Iraqi security officials. Unauthorized disclosure of the classified material specified above would cause serious harm to relations with the Government of Iraq and hinder future willingness of Iraqi authorities to share information with U.S. officials.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

07BEIJING152 is an official telegram from Embassy Beijing, dated January 8, 2007 to the Department of State. Five pages. The telegram was properly classified CONFIDENTIAL under E.O. 12958 at the time it was generated. The telegram remains CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b)(d).

IMPACT OF RELEASE

This telegram describes the U.S. Charge d' Affairs' conversation with a Chinese Assistant Foreign Minister held with an expectation of confidentiality concerning matters related to the Taiwanese and their alleged "separatist activities." Unauthorized disclosure of the classified material would cause harm to relations with the Government of China and diminish its officials' confidence in being able to discuss complex diplomatic business with U.S. officials without their views being publicized.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

07BEIRUT1958 is an official telegram from Embassy Beirut, dated December 14, 2007 to the Department of State. Six pages. The telegram was properly classified CONFIDENTIAL under E.O. 12958 at the time it was generated. It remains CONFIDENTIAL under E.O. 13526 under Section 1.4(d).

IMPACT OF RELEASE

The telegram reports the Embassy's conversations with political leaders on sensitive internal issues concerning their movement. The leaders, many of whom are still active in Lebanon's tempestuous politics, would expect their confidences to be strictly protected by U.S. officials. Unauthorized disclosure of the classified material specified above would cause harm to

relations with the opposition political figures in Lebanon and diminish its leaders' willingness to discuss policy matters with U.S. officials.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

07BOGOTA101 is an official telegram from Embassy Bogota, dated January 5, 2007 to the Department of State. Seven pages. The telegram was properly classified CONFIDENTIAL in part under E.O. 12958 at the time it was generated. Portions of the telegram remain CONFIDENTIAL under E.O. 13526 under Section 1.4(d).

IMPACT OF RELEASE

This cable sets out for a visiting senior U.S. military commander the political and security situation in Colombia and describes the views of senior Colombian officials on the country's strained relations with several third countries. The withheld material speculates on new directions in foreign policy following political change. It discusses the country's relations with two other countries which have become particularly sensitive. Unauthorized disclosure of the classified material specified above would cause harm to relations with the Government of Colombia and with third countries and would diminish the willingness of Colombian officials to conduct confidential diplomatic business with U.S. officials, to the detriment of our interests in the country.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

07BOGOTA5118 is an official telegram from Embassy Bogota, dated July 13, 2007 to the Department of State. Four pages. The telegram was properly classified CONFIDENTIAL in part under E.O. 12958 at the time it was generated. Portions of the telegram remain CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b)(d).

IMPACT OF RELEASE

Those portions describe ongoing negotiations between the Government of Colombia and a terrorist group and the Government's priority objectives in those negotiations. The information was provided to us by officials in confidence, and their identity deserves protection. The information includes strategies and tactics that the Government might still employ in negotiations with dissidents and our own evaluation of their possible effectiveness. Unauthorized disclosure of the classified material specified above would cause harm to relations with the Government of Colombia and diminish its officials' willingness to conduct confidential diplomatic business with U.S. officials or to provide information, to the detriment of our interests in the country.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

07BRATISLAVA665 is an official telegram from Embassy Bratislava, dated December 14, 2007 to the Department of State. Three pages. The telegram was properly classified CONFIDENTIAL under E.O. 12958 at the time it was generated. Portions of the telegram remain CONFIDENTIAL in part under E.O. 13526 under Sections 1.4 (b)(d).

IMPACT OF RELEASE

Classified portions report on a private meeting between the Deputy Chief of Mission and the Deputy Foreign Minister of Slovakia in which they discussed Kosovo and Iran. Unauthorized disclosure of the classified material specified above would cause harm to relations with the Government of Slovakia and diminish the willingness of Slovak and other officials to conduct confidential diplomatic business with U.S. representatives.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

07BRIDGETOWN23 is an official telegram from Embassy Bridgetown, dated January 5, 2007 to the Department of State. Five pages. The telegram was properly classified CONFIDENTIAL in part under E.O. 12958 at the time it was generated. Portions of the telegram remain CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b)(d).

IMPACT OF RELEASE

Those portions describe the impact in Grenada of recent elections in a neighboring Caribbean country, the efforts of Grenadian political groups to use the outcome for their own purposes, and the private comments of leading Grenadian political figures to U.S. Government officials. The information was given with an expectation of confidentiality. The information includes a frank analysis of weaknesses of various elements of the local political scene and the media. It speculates on tactics to be used by various political groups. Unauthorized disclosure of the classified material specified above would cause harm to relations with various Grenadian political factions and leaders as well as Government officials and would discourage their willingness to engage in candid and confidential diplomatic exchanges with U.S. officials, to the detriment of U.S. interests in the country.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

07BUENOSAIRES1341 is an official telegram from Embassy Buenos Aires, dated July 13, 2007 to the Department of State. Four pages. The telegram was properly classified CONFIDENTIAL under E.O. 12958 at the time it was generated. The telegram remains CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b)(d).

IMPACT OF RELEASE

The message describes the U.S. Ambassador's conversations with Government of Argentina officials concerning differences within the Argentine Government on relations with the U.S. Government. They took place in a confidential environment that permitted each official to speak frankly. The message makes recommendations on improving strained bilateral and regional ties. It proposes further high-level discussions with Department of State principals. Sensitive regional issues are raised in the conversations, with a frank exchange of views. Past bilateral problems are discussed. Unauthorized disclosure of the classified material specified above would cause harm to relations with the Government of Argentina, diminish its officials' willingness to conduct confidential diplomatic business with U.S. officials, and inhibit future negotiations.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

07CARACAS2346 is an official telegram from Embassy Caracas, dated December 14, 2007 to the Department of State. Four pages. The telegram was properly classified CONFIDENTIAL under E.O. 12958 at the time it was generated. The telegram remains CONFIDENTIAL under E.O. 13526 under Section 1.4(d).

IMPACT OF RELEASE

The message describes developments in a key Venezuelan economic sector, drawing on the assessments of multiple industrial sector and official sources. It speculates on possible malfeasance and reports evidence of multiple financial difficulties relating to a bulwark of the country's economy. Unauthorized disclosure of the classified material specified above would seriously damage commercial and official interests of the various sources, diminish their willingness to engage in candid exchanges with U.S. officials, and open them to official harassment and commercial retaliation. It would reduce the ability of our officials to protect U.S. economic interests.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

07CARACAS35 is an official telegram from Embassy Caracas, dated January 5, 2007 to the Department of State. Six pages. The telegram was properly classified CONFIDENTIAL in part under E.O. 12958 at the time it was generated. Portions of the telegram remain CONFIDENTIAL under E.O. 13526 under Section 1.4(d).

IMPACT OF RELEASE

Those portions describe a Venezuelan Government's initiative to form a single "revolutionary" political party, the Embassy's frank assessment of the purpose of the new organization, and the reaction of diverse supporters of President Chavez to being subject to increased political discipline and stricter ideology. It speculates on tactics to be used by the

Government. Unauthorized disclosure of the classified material specified above would cause harm to relations with the Government of Venezuela and diminish the willingness of Venezuelan political leaders and other sources to conduct confidential and candid discussions with U.S. officials and to provide information.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

07DHAKA24 is an official telegram from Embassy Dhaka, dated January 7, 2007 to the Department of State. Four pages. The telegram was properly classified **CONFIDENTIAL** under E.O. 12958 at the time it was generated. Portions of the telegram remain **CONFIDENTIAL** under E.O.13526 under Sections 1.4(b)(d).

IMPACT OF RELEASE

The telegram reports the Ambassador's conversation, together with a third country national, in forming the head of a major Bangladeshi political party of highly sensitive political information that had come from confidential sources. While the fact of the Ambassador's meeting with a political leader is not sensitive, the unauthorized disclosure of the classified material specified above could be explosive in the Bangladeshi domestic political scene and cause harm to relations with the party leader and other influential persons in Bangladesh, and thereby impair the Embassy's ability to effectively represent U.S. national security interests in that country.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

07KABUL68 is an official telegram from Embassy Kabul, dated January 7, 2007. Four pages. The telegram was properly classified **SECRET** under E.O. 12958 at the time it was generated. The telegram remains **SECRET** under E.O. 13526 under Sections 1.4 (b)(d).

IMPACT OF RELEASE

The telegram describes a meeting between Embassy Kabul and a number of Afghan officials discussing in detail matters concerning Afghan detainees held by the U.S. Portions withheld describe various possible arrangements between the U.S. and Afghanistan for the possible movement and/or release of particular individuals. It reveals information about and constraints perceived on this highly sensitive subject which is a matter of concern not only to the detainees and their families but also to a wide spectrum of the Afghan populace. Its release would cause harm to relations with the Government of Afghanistan and diminish its officials' willingness to conduct confidential diplomatic business with U.S. officials.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

07KINGSTON25 is an official telegram from Embassy Kingston, dated January 5, 2007 to the Department of State. Four pages. The telegram was properly classified **CONFIDENTIAL**

in part under E.O. 12958 at the time it was generated. Portions of the telegram remain CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b)(d).

IMPACT OF RELEASE

Those portions describe sensitive comments by a leading international health official on the efficacy of the Government of Jamaica's response to a malaria outbreak and the country's funding priorities for public health. He speculates on the effect the outbreak might have on a future international sporting event to be hosted by Jamaica. Unauthorized disclosure of the classified material specified above would cause harm to relations with the Government of Jamaica, diminish the willingness of international officials to conduct confidential business with U.S. officials, and create strains in relations between an international entity and the Government of Jamaica.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

07KUALALUMPUR40 is an official telegram from Embassy Kuala Lumpur, dated January 8, 2007 to the Department of State. Two pages. The telegram was properly classified CONFIDENTIAL under E.O. 12958 at the time it was generated. The telegram remains CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b)(d).

IMPACT OF RELEASE

This telegram describes a U.S. Embassy officer's confidential conversations with a senior Malaysian Foreign Affairs official concerning a controversial matter to be considered by the UN Security Council. Unauthorized disclosure of this classified material would cause harm to relations with the Government of Malaysia and diminish its officials' confidence in discussing sensitive international issues with the U.S., without fear of their views being publicized.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

07LAGOS719 is an official telegram from Embassy Lagos, dated November 1, 2007 to the Department of State. Four pages. The telegram was properly classified CONFIDENTIAL in part under E.O. 12958 at the time it was generated. Portions of it remain CONFIDENTIAL under E.O. 13526 under Section 1.4 (d).

IMPACT OF RELEASE

It is an Embassy report on a new, highly publicized gubernatorial appointment. Portions of it draw on the sensitive comments of private sources who believed they were speaking in confidence and whose identities need to be protected. Unauthorized disclosure of the classified material specified above would cause harm to the Embassy's relations with political leaders and diminish their willingness to engage in candid discussions with U.S. officials in the future.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

07LAPAZ1949 is an official telegram from Embassy La Paz, dated July 13, 2007 to the Department of State. Three pages. The telegram was properly classified CONFIDENTIAL under E.O. 12958 at the time it was generated. Portions of the telegram remain CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b)(d).

IMPACT OF RELEASE

Those portions describe the comments of leading Bolivian political figures about an attack on an indigenous leader and the Embassy's frank assessment of the political consequences of the incident. Unauthorized disclosure of the classified material specified above would cause harm to relations with the Government of Bolivia and diminish the willingness of leading Bolivian politicians to conduct confidential diplomatic business with U.S. officials, to the detriment of our interests in the country.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

07LIMA2400 is an official telegram from Embassy Lima, dated July 13, 2007 to the National Security Council and to the Department of State. Four pages. The telegram was properly classified CONFIDENTIAL in part under E.O. 12958 at the time it was generated. Portions of the telegram remain CONFIDENTIAL under E.O. 13526 under Section 1.4 (d).

IMPACT OF RELEASE

Those portions describe U.S. officials' confidential conversations with Government of Peru officials and civic leaders during a period of increased labor unrest and street demonstrations. It includes the Embassy's frank assessment of the likely political consequences of the unrest. Several sources are identified whose opinions and information are of importance to the Embassy in protecting U.S. interests in the country. Unauthorized disclosure of the classified material specified above would cause harm to relations with the Government of Peru and diminish willingness of its officials and of civic leaders to conduct confidential diplomatic business with U.S. officials and to provide information.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

07MINSK1024 is an official telegram from Embassy Minsk, dated December 14, 2007 to the Department of State. Three pages. The telegram was properly classified CONFIDENTIAL in part under E.O. 12958 at the time it was generated. Portions of the telegram remain CONFIDENTIAL under E.O. 13526 under Section 1.4 (d).

IMPACT OF RELEASE

The telegram reports on a visit by the Ambassador and a representative of the European Union to a hospitalized youth leader who had been beaten by police. Classified portions contain

the views of the hospitalized activist and a relative as well as information from another named source about his condition. Unauthorized disclosure of the classified material specified above would endanger Embassy contacts in Belarus and diminish the willingness of sources everywhere to speak frankly with U.S. officials.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

07MOSCOW5824 is an official telegram from Embassy Moscow, dated December 14, 2007 to the Department of State. Four pages. The telegram was properly classified CONFIDENTIAL under E.O. 12958 at the time it was generated. The telegram remains CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b)(d).

IMPACT OF RELEASE

The telegram reports what a senior Russian diplomat told an embassy officer in confidence on a variety of current issues. Unauthorized disclosure of the classified material specified above would cause harm to relations with the Government of Russia and diminish the willingness of Russian and other officials to conduct confidential diplomatic business with U.S. representatives.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

07MOSCOW5825 is an official telegram from Embassy Moscow, dated December 14, 2007 to the Department of State. Five pages. The telegram was properly classified CONFIDENTIAL under E.O. 12958 at the time it was generated. The telegram remains CONFIDENTIAL under E.O. 13526 under Section 1.4 (d).

IMPACT OF RELEASE

The telegram discusses Russian politics, presenting the views of numerous identified sources who talked with Embassy officers in the expectation of confidentiality. Unauthorized disclosure of the classified material specified above would endanger some of the sources cited and, in general, diminish the willingness of Russians and others to speak frankly with U.S. officials.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

07NEWDELHI80 is an official telegram from Embassy New Delhi, dated January 8, 2007 to the Department of State. Three pages. The telegram was properly classified CONFIDENTIAL in part under E.O. 12958 at the time it was generated. Portions of the telegram remain CONFIDENTIAL under E.O. 13526 under Section 1.4 (d).

IMPACT OF RELEASE

The telegram reports the passage of a religious conversion ban in one State in India. Those portions that remain CONFIDENTIAL include the source of an opinion given by a member of a minority religious community and the Embassy's comment on the political significance of the measure to the central government in India. Unauthorized disclosure of the source could adversely impact the personal welfare of the interlocutor. Disclosure of the U.S. comment would likely be exploited by political and/or sectarian parties, thereby inflaming anti-American feelings and causing harm to U.S. relations with India.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

07PANAMA1197 is an official telegram from Embassy Panama, dated July 13, 2007 to the Department of State. Seven pages. The telegram was properly classified CONFIDENTIAL in part under E.O. 12958 at the time it was generated. Portions of the telegram remain CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b)(d).

IMPACT OF RELEASE

Those portions describe confidential conversations between U.S. officials and Government of Panama officials and opposition leaders on infighting within Panama's political parties. These frank discussions center on candidates for legislative leadership positions and for the Presidency. There are also sensitive conversations on Panama's relations with third countries which directly affect U.S. interests. Unauthorized disclosure of the classified material specified above would cause harm to relations with the Government of Panama and diminish the willingness of officials and other political leaders to provide information and to conduct confidential diplomatic business with U.S. officials, to the detriment of our interests in the country.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

07PANAMA1198 is an official telegram from Embassy Panama, dated July 13, 2007 to the Department of State. Two pages. The telegram was properly classified CONFIDENTIAL under E.O. 12958 at the time it was generated. The telegram remains CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b)(d).

IMPACT OF RELEASE

The message describes the U.S. Ambassador's conversations with Government of Panama officials after delivering a demarche on sensitive negotiations on a difficult regional problem. They took place in a confidential environment that permitted each official to speak frankly. The message includes an Embassy assessment of the likely Panamanian response to U.S. proposals. Unauthorized disclosure of the classified material specified above would cause

harm to relations with the Government of Panama, diminish its officials' willingness to conduct confidential diplomatic business with U.S. officials, and inhibit future negotiations.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

07PARIS4722 is an official telegram from Embassy Paris, dated December 14, 2007 to the Department of State. Four pages. The telegram was properly classified SECRET under E.O. 12958 at the time it was generated. The telegram remains SECRET under E.O. 13526 under Sections 1.4 (b)(d).

IMPACT OF RELEASE

The telegram reports the views of two named foreign officials about Franco-German cooperation and French officials. The comments were made to a U.S. Embassy officer in the expectation of confidentiality. Unauthorized disclosure of the classified material specified above would jeopardize the career of one source and, in general, diminish the willingness of foreign officials to exchange views with U.S. representatives.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

07PARIS4723 is an official telegram from Embassy Paris, dated December 14, 2007 to the Department of State. Four pages. The telegram was properly classified CONFIDENTIAL under E.O. 12958 at the time it was generated. The telegram remains CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b)(d)(e).

IMPACT OF RELEASE

The telegram concerns an international trade dispute between the United States and the European Union. It provides the Embassy's analysis of the problem and its recommendations for action, while also identifying a source of information provided in confidence to the Embassy. Unauthorized disclosure of the classified material specified above would cause harm to the economic interests of the United States and diminish the willingness of foreign contacts to conduct confidential diplomatic business with U.S. officials.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

07RANGOON22 is an official telegram from Embassy Rangoon, dated January 8, 2007 to the Department of State. Three pages. The telegram was properly classified CONFIDENTIAL under E.O. 12958 at the time it was generated. The telegram remains CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b)(d).

IMPACT OF RELEASE

This telegram describes sensitive information and analysis concerning the Burmese ruling authorities and possible future political developments. In addition, it includes comments from

multiple sources, including a third country diplomat, provided with an expectation of confidentiality concerning Burmese internal matters. Unauthorized disclosure of the classified material would damage relations with the host government and also jeopardize the ability of the U.S. Embassy to obtain similar information in the future from these and other sources.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

07REYKJAVIK203 is an official telegram from Embassy Reykjavik, dated July 13, 2007 to the Department of State. Four pages. The telegram was properly classified CONFIDENTIAL in part under E.O. 12958 at the time it was generated. Portions of the telegram remain CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b)(d).

IMPACT OF RELEASE

The telegram concerns an Icelandic inquiry into allegations that the CIA transported detainees through Iceland. Classified portions report the Embassy's analysis of the situation and the views of named or identifiable Icelandic officials as provided to Embassy staff in the expectation of confidentiality. Unauthorized disclosure of the classified material specified above would cause harm to relations with the Government of Iceland and diminish the willingness of Icelandic and other officials to conduct confidential diplomatic business with U.S. representatives.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

07RIYADH21 is an official telegram from Embassy Riyadh, dated January 8, 2007 to the Department of State. Two pages. The telegram was properly classified SECRET under E.O. 12958 at the time it was generated. It remains SECRET under E.O. 13526 under Sections 1.4 (b)(d).

IMPACT OF RELEASE

The document reports a diplomatic demarche by an Embassy Officer on an official of the Saudi Ministry of Foreign Affairs on a regional matter, including the response of the Saudi official. The Saudi official spoke in the expectation that the diplomatic exchange would be treated as confidential. Unauthorized disclosure of the classified material specified above would cause serious harm to relations with the Government of the Kingdom of Saudi Arabia and diminish its officials' willingness to speak in confidence to U.S. officials.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

07RIYADH22 is an official telegram from Embassy Riyadh, dated January 8, 2007 to the Department of State. Two pages. The telegram was properly classified CONFIDENTIAL under E.O. 12958 at the time it was generated. It remains CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b) and (d).

IMPACT OF RELEASE

The document is a report of a diplomatic demarche by an Embassy Officer on a senior official of the Saudi Ministry of Foreign Affairs concerning regional and bilateral matters. The content of the demarche, as well as the response of the Saudi official, remain sensitive. The Saudi official spoke in the expectation that the diplomatic exchange would be treated as confidential. Unauthorized disclosure of the classified material specified above would cause harm to relations with the Government of the Kingdom of Saudi Arabia and diminish its officials' willingness to speak in confidence to U.S. officials.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

07RIYADH23 is an official telegram from Embassy Riyadh, dated January 8, 2007 to the Department of State. Two pages. The telegram was properly classified SECRET under E.O. 12958 at the time it was generated. It remains SECRET under E.O. 13526 under Sections 1.4 (b) and (d).

IMPACT OF RELEASE

The document is a report of a diplomatic demarche by an Embassy Officer on an official of the Saudi Ministry of Foreign Affairs on a sensitive regional matter, and includes the response of the Saudi official. The Saudi official spoke in the expectation that the diplomatic exchange would be treated as confidential. Unauthorized disclosure of the exempted material would cause serious harm to U.S. relations with the Government of the Kingdom of Saudi Arabia and would diminish its officials' willingness to speak in confidence to U.S. officials.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

07SANSALVADOR1375 is an official telegram from Embassy San Salvador, dated July 13, 2007 to the Department of State. Three pages. The telegram was properly classified CONFIDENTIAL under E.O. 12958 at the time it was generated. Portions of the telegram remain CONFIDENTIAL under E.O. 13526 under Sections 1.4 (a)(d)(g).

IMPACT OF RELEASE

Those portions describe proposed U.S. governmental assistance programs aimed at addressing Salvadoran vulnerabilities to international narcotics traffickers and terrorists. The portions describe specific equipment and training and how certain equipment can best meet Salvadorian needs. Unauthorized disclosure of the classified material specified above would expose vulnerabilities of the Salvadoran police and military to the operations of international narcotics traffickers and terrorists, to the detriment of U.S. interests.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

07SANTODOMINGO28 is an official telegram from Embassy Santo Domingo, dated January 8, 2007 to the Department of State. Nine pages. The telegram was properly classified CONFIDENTIAL in part under E.O. 12958 at the time it was generated. Portions of the telegram remain CONFIDENTIAL under E.O. 13526 under Section 1.4 (d).

IMPACT OF RELEASE

Those portions describe the U.S. Embassy's assessment of the level of corruption in the Dominican Republic, public attitudes toward the problem, efforts of the Dominican Government to confront it, and the likelihood of success. The material includes reports of political motivations for prosecution of corruption. Unauthorized disclosure of the classified material specified above would cause harm to relations with the Government of the Dominican Republic and diminish the willingness of its officials and other sources to conduct confidential diplomatic business with U.S. officials and to provide information, to the detriment of U.S. interests.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

07SUVA18 is an official telegram from Embassy Suva, dated January 7, 2007 to the Department of State. Seven pages. The telegram was properly classified CONFIDENTIAL in part under E.O. 12958 at the time it was generated. Portions of the telegram remain CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b)(d).

IMPACT OF RELEASE

The remaining classified portions of this telegram describe the formation of an interim government in Fiji following a coup carried out by Fiji's military commander, Commodore Bainimarama. Many of the sources as well as the individuals mentioned continue to be important active senior political figures in Fiji. Unauthorized disclosure of the classified material would cause harm to U.S. relations with the Government of Fiji and diminish the trust of local sources to share information with the U.S. Embassy.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

07TUNIS47 is an official telegram from Embassy Tunis, dated January 5, 2007 to the Department of State. Five pages. The telegram was properly classified SECRET in part under E.O. 12958 at the time it was generated. Portions remain SECRET under E.O. 13526 under Sections 1.4 (b) and (d).

IMPACT OF RELEASE

The document is a briefing paper for the upcoming visit to Tunisia of a U.S. official. The exempted portions refer to an incident the details of which were obtained by sensitive means. It also reports a sensitive action by the Government of Tunisia concerning internal security.

Unauthorized disclosure of the exempted material would cause serious harm to sensitive sources, and harm relations with the Government of Tunisia, including the present interim one, with the result being that that Tunisian individuals and officials would have less trust in their future exchanges with U.S. officials.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

07USUNNEWYORK573 is an official telegram from the United States UN Mission, dated July 13, 2007 to the Department of State. Four pages. The telegram was properly classified CONFIDENTIAL in part under E.O. 12958 at the time it was generated. Portions of the telegram remain CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b)(d).

IMPACT OF RELEASE

Those portions describe senior State Department and White House officials' confidential conversations with the Secretary General of the United Nations on sensitive international negotiations concerning difficult regional problems. The frank discussion took place with an expectation of confidentiality. The give and take permitted each side to promote its objectives. Unauthorized disclosure of the classified material specified above would cause harm to sensitive international negotiations and diminish the willingness of United Nation officials to conduct confidential diplomatic business with U.S. officials.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

07USUNNEWYORK575 is an official telegram from the U.S. Mission to the United Nations, dated July 13, 2007 to the Department of State. Five pages. The telegram was properly classified CONFIDENTIAL under E.O. 12958 at the time it was generated. Portions of the telegram remain CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b)(d).

IMPACT OF RELEASE

The telegram concerns United Nations efforts to establish a special tribunal to investigate the assassination of a political leader and other attacks in Lebanon. It reports a meeting in which a named UN official briefed representatives of the U.S. mission in the expectation of confidentiality. Unauthorized disclosure of the classified material specified above would cause harm to relations with the United Nations and diminish the willingness of UN and other officials to conduct confidential diplomatic business with U.S. officials.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

07USUNNEWYORK578 is an official telegram from the U.S. Mission to the United Nations, dated July 13, 2007 to the Department of State. Four pages. The telegram was properly classified CONFIDENTIAL in part under E.O. 12958 at the time it was generated. Portions of the telegram remain CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b)(d).

IMPACT OF RELEASE

The telegram reports on a private meeting of diplomats from seven countries to negotiate a Security Council resolution on Kosovo. The classified portions are statements of national positions, including verbatim quotations from foreign Ambassadors, not always in accordance with their instructions. Unauthorized disclosure of the classified material specified above would diminish the willingness of foreign officials to conduct confidential diplomatic business with U.S. representatives and consequently damage relations with several foreign governments.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

07VIENTIANE12 is an official telegram from the American Embassy Vientiane, dated January 8, 2007 to the Department of State. Nine pages. The telegram was properly classified CONFIDENTIAL in part under E.O. 12958 at the time it was generated. Portions of the telegram remain CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b)(d).

IMPACT OF RELEASE

The classified portions of this telegram describe a discussion between a U.S. Congressman and a Vice President of the Lao National Assembly, who is also a Politburo member. The embassy's reporting contains sensitive candid comments concerning this senior political figure in Laos. Unauthorized disclosure of the classified material would cause harm to U.S. relations with the Government of Laos and would be likely to diminish Lao cooperation with the American Embassy on issues important to the U.S.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

07VILNIUS13 is an official telegram from Embassy Vilnius, dated January 8, 2007 to the Department of State. Four pages. The telegram was properly classified CONFIDENTIAL in part under E.O. 12958 at the time it was generated. Portions of the telegram remain CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b)(d).

IMPACT OF RELEASE

The telegram concerns Lithuanian efforts to satisfy the requirements for membership in the "Schengen" group of European countries with open internal borders. Classified portions contain the Embassy's analysis and report the views of named Lithuanian officials that were offered to Embassy staff in the expectation of confidentiality and were sometimes critical of the Lithuanian government. Unauthorized disclosure of the classified material specified above would cause harm to relations with the Government of Lithuania and diminish the willingness of Lithuanian and other officials to conduct confidential diplomatic business with U.S. representatives.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

08AMMAN535 is an official telegram from Embassy Amman, dated February 20, 2008 to the Department of State. Ten pages. The telegram was properly classified CONFIDENTIAL in part under E.O. 12958 at the time it was generated. Portions of the telegram remain CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b) and (d).

IMPACT OF RELEASE

The document contains the Embassy's report of the actions of opposition politicians and groups in the lead up to changes in political organization and parliamentary elections. It reports confidential contacts with senior Jordanian government officials on the elections, as well as delicate Embassy analysis of the situation. Unauthorized disclosure of the classified material specified above would cause harm to relations with officials of the Government of the Kingdom of Jordan, and would hamper the Embassy's future ability to communicate in confidence with non-governmental political players.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

08CAIRO569 is an official telegram from Embassy Cairo, dated March 23, 2008 to the Department of State. Three pages. The telegram was properly classified CONFIDENTIAL in part under E.O. 12958 at the time it was generated. Portions of the telegram remain CONFIDENTIAL under E.O. 13526 under Section 1.4 (d).

IMPACT OF RELEASE

The document is a report of a conversation between an Embassy officer and an Arab League official whose name, and occasionally the information he provided, must be protected because he was at times speaking in confidence. The information concerned third countries, and the source's opinions that he clearly shared in expectation of confidentiality. Unauthorized disclosure of the classified material specified above would cause harm to relations with the Embassy in its relations with the Arab League and impair the ability of U.S. officials to conduct diplomatic exchanges with members of that organization.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

08DARESSALAAM206 is an official telegram from Embassy Dar es Salaam, dated April 1, 2008 to the Department of State. Six pages. The telegram was properly classified CONFIDENTIAL in part under E.O. 12958 at the time it was generated. Portions remain CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b) and (d).

IMPACT OF RELEASE

The document reports a conversation between our Ambassador and the Minister of Foreign Affairs, including discussion of Zimbabwe and other regional issues. Some topics

covered were sensitive and the Minister spoke in the expectation of confidentiality. Unauthorized disclosure of the classified material specified above would cause harm to relations with the Government of the Tanzania and would hinder future interchanges between U.S. officials and the Tanzanian government.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

08KHARTOUM246 is an official telegram from Embassy Khartoum, dated February 20, 2008 to the Department of State. Four pages. The telegram was properly classified CONFIDENTIAL under E.O. 12958 at the time it was generated. Portions of it remain CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b) and (d).

IMPACT OF RELEASE

The telegram reports a conversation between the U.S. Charge d'Affaires and the Commanding General of the U.N. peacekeeping force in Darfur. The general shares his views on the situation and briefs the Charge on his plans. Some of his comments are sensitive and were offered in the expectation of confidentiality. The document also offers its own views on the general's remarks, some of which are not intended for the public. Unauthorized disclosure of the classified material specified above would cause harm to relations with the United Nations and hinder the ability of U.S. officials in the future to exchange views in full candor, especially in peacekeeping situations where the United Nations is participating. Revelation of some of the U.S. analysis of the general's comments, which was meant for internal consumption, would also be harmful to U.S. relations with the United Nations.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

08KHARTOUM428 is an official telegram from Embassy Khartoum, dated March 23, 2008 to the Department of State. Nine pages. The telegram was properly classified CONFIDENTIAL in part under E.O. 12958 at the time it was generated. Portions of the telegram remain CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b) and (d).

IMPACT OF RELEASE

It reports a discussion between the U.S. Charge d'Affaires in the course of which a senior official of the Sudanese Ministry of Foreign Affairs presented Sudan's formal response to an earlier U.S. paper on bilateral relations. Some of the exchange dealt with bilateral issues that should not be discussed in public because of their sensitivity and because the expectation was that they would be held in confidence. Other passages contain frank Embassy analysis of the state of play that were not intended to be revealed. Unauthorized disclosure of the classified material specified above would cause harm to relations with the Government of Sudan and hinder the ability of U.S. officials in the future to exchange views in full candor. Revelation of U.S. analysis of Sudanese motivations would be harmful to relations with that country's officials.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

09ADDISABABA1063 is an official telegram from Embassy Addis Ababa, dated May 7, 2009 to the Department of State. Four pages. The telegram was properly classified CONFIDENTIAL under E.O. 12958 at the time it was generated. Portions of it remain CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b) and (d).

IMPACT OF RELEASE

The telegram transmits a briefing paper for the upcoming visit of the U.S. Ambassador to the United Nations. It discusses bilateral and regional issues. Some portions of it reveal information passed in confidence by the Ethiopian government, and some contain candid Embassy analysis of Ethiopian actions and policy not intended for public revelation. Unauthorized disclosure of the classified material specified above would cause harm to relations with the Government of Ethiopia and hinder the ability of U.S. officials to conduct daily business with the leaders of that country.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

09BAGHDAD2390 is an official telegram from Embassy Baghdad, dated September 5, 2009 to the Department of State. Three pages. The telegram was properly classified CONFIDENTIAL under E.O. 12958 at the time it was generated. It remains CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b) and (d).

IMPACT OF RELEASE

The document reports an Embassy Officer's conversation with a staff member of a senior Iraqi official on internal Iraqi politics and on its relations with a third country. The Iraqi official spoke in the expectation that the exchange would be treated as confidential. Unauthorized disclosure of the classified material specified above would cause harm to relations with the Government of the Iraq and would impair our relations with the source, as well as the senior official for whom he works.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

09BAMAKO85 is an official telegram from Embassy Bamako, dated February 12, 2009 to the Department of State. Seven pages. The telegram was properly classified CONFIDENTIAL in part under E.O. 12958 at the time it was generated. Portions of the telegram remain CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b) and (d).

IMPACT OF RELEASE

This document contains the Embassy's assessment in early 2009 of the military status of the Tuareg rebellion in northern Mali, as well as efforts by the Government of Mali to find a negotiated solution. The majority of the cable consists of: the Embassy's analysis of the

military capability of government and rebel forces; the impact on regional security; the relation of the Tuareg rebellion to Al Qaeda activities in North Africa; and potential actions by two neighboring states. Some of the information in the document was obtained from confidential sources and its revelation could risk exposing them. Other portions involving Embassy assessments would risk offending area governments. Unauthorized disclosure of the classified material specified above would significantly damage relations with the Government of Mali and with at least two neighboring states. Disclosure would greatly lessen the ability of officials at Embassy Bamako to acquire sensitive information from Government of Mali civilian and military officials. It would also potentially disclose analytical procedures to organizations and states which are attempting to overthrow, or supporting the overthrow, of friendly governments in the region.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

09BOGOTA2873 is an official telegram from Embassy Bogota, dated September 4, 2009 to the Department of State. Four pages. The telegram was properly classified CONFIDENTIAL in part under E.O. 12958 at the time it was generated. Portions of the telegram remain CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b)(d).

IMPACT OF RELEASE

Those portions describe conversations between a U.S. official and a senior official of an Afro-Colombian organization on the arrest of two members of the Colombian Congress (who are also members of the Afro-Colombian organization) because of alleged paramilitary ties. Included is the Embassy's assessment of the impact of the arrests on the future influence of the Afro-Colombian organization. The frank discussion took place with the expectation of confidentiality. The message also discusses past U.S. assistance to the organization. Unauthorized disclosure of the classified material specified above would diminish the willingness of prominent Colombian politicians and leaders to conduct confidential diplomatic business with U.S. officials, to the detriment of our interests.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

09BRASILIA1112 is an official telegram from Embassy Brasilia, dated September 4, 2009 to the Department of State. Four pages. The telegram was properly classified CONFIDENTIAL under E.O. 12958 at the time it was generated. The telegram remains CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b)(d).

IMPACT OF RELEASE

It describes a U.S. official's confidential conversations with Government of Brazil officials on sensitive negotiations on possible Brazilian involvement in a sensitive area of the world. They took place in a confidential environment that permitted each official to speak

frankly and to seek agreement on actions mutually beneficial to the interests of the two countries. This opportunity provided a forum for an exchange of information each side was seeking. It also facilitated the scheduling of further meetings with experts concerning the area in question. Unauthorized disclosure of the classified material specified above would cause harm to relations with the Government of Brazil, diminish its officials' willingness to conduct confidential diplomatic business with U.S. officials, and inhibit future negotiations.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

09BRASILIA1113 is an official telegram from Embassy Brasilia, dated September 4, 2009 to the Department of State. Eight pages. The telegram was properly classified CONFIDENTIAL in part under E.O. 12958 at the time it was generated. Portions of the telegram remain CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b)(d).

IMPACT OF RELEASE

Those portions describe the U.S. National Security Advisor's visit to Brazil and his conversations with Government of Brazil officials including sensitive issues related to Brazil's relations with third countries. These frank discussions took place with an expectation of confidentiality. They centered on problems around the region of Latin America in which both countries have considerable interest in finding solutions. They also touched on trade relations, non-proliferation, and trouble spots outside Latin America. Unauthorized disclosure of the classified material specified above would cause harm to relations with the Government of Brazil and diminish its officials' willingness to exchange information and to conduct confidential diplomatic business with U.S. officials.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

09CARACAS1168 is an official telegram from Embassy Caracas, dated September 4, 2009 to the Department of State. Six pages. The telegram was properly classified CONFIDENTIAL in part under E.O. 12958 at the time it was generated. Portions of the telegram remain CONFIDENTIAL under E.O. 13526 under Section 1.4 (d).

IMPACT OF RELEASE

Those portions describe a Government of Venezuela initiative to criminalize public protests and the Embassy's assessment of the impact this initiative will have on opposition leaders and groups. The message also explores future implications of this new initiative and its possible effect on specific opposition leaders. Unauthorized disclosure of the classified material specified above would cause harm to relations with the Government of Venezuela, result in the harassment of opposition leaders, and impede our ability to obtain information in the future from these and similar sources.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

09LIMA1309 is an official telegram from Embassy Lima, dated September 4, 2009 to the Department of State. Four pages. The telegram was properly classified CONFIDENTIAL under E.O. 12958 at the time it was generated. The telegram remains CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b)(d).

IMPACT OF RELEASE

The message describes a sensitive hostage rescue effort, assesses possible political ramifications, and discusses Peruvian vulnerabilities when undertaking such actions. The message speculates on possible next steps against the Sendero Luminoso guerrillas and analyses the government's tactics. Unauthorized disclosure of the classified material specified above would cause harm to relations with the Government of Peru and reveal police and military vulnerabilities when confronting terrorist organizations.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

09MEXICO2658 is an official telegram from Embassy Mexico City, dated September 4, 2009 to the Department of State. Two pages. The telegram was properly classified CONFIDENTIAL under E.O. 12958 at the time it was generated. Portions of the telegram remain CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b)(d).

IMPACT OF RELEASE

Those portions describe a U.S. official's conversations with a Government of Mexico official on Mexico's position on a sensitive United Nations-related issue. They took place in a confidential environment that permitted each official to speak frankly. The issue relates to the scheduling of limited time for speakers at a meeting of an international organization. Unauthorized disclosure of the classified material specified above would cause harm to relations with the Government of Mexico and diminish its officials' willingness to conduct confidential diplomatic business with U.S. officials, to the detriment of our interests.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

09NEWDELHI00267 is an official telegram from Embassy New Delhi, dated February 12, 2009 to the Department of State. Six pages. The telegram was properly classified CONFIDENTIAL in part under E.O. 12958 at the time it was generated. Portions of the telegram remain CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b)(d).

IMPACT OF RELEASE

The telegram reports a discussion between the Ambassador and a high level Indian official, primarily about the U.S.-Indian nuclear cooperation program, at the beginning of the then new U.S. administration. Portions that remain CONFIDENTIAL reveal differences of

views between the two governments on various implementation issues related to that program, including discussion of allegedly inequitable treatment. The telegram also briefly discusses Afghanistan and Pakistan, including the status of India-Pakistan discussions on terrorist attacks. Disclosure of the classified material specified above would cause harm to relations with the Governments of India, Pakistan, and to a lesser extent Afghanistan, and diminish those governments' officials' confidence in their ability to conduct confidential diplomatic business with U.S. officials.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

09PARIS217 is an official telegram from Embassy Paris, dated February 12, 2009 to the Department of State. Two pages. The telegram was properly classified CONFIDENTIAL under E.O. 12958 at the time it was generated. Portions of the telegram remain CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b)(d).

IMPACT OF RELEASE

The telegram reports the views of a named French diplomat concerning international strategy toward the recognition of Kosovo. The French diplomat spoke with the expectation that his remarks would be protected. Unauthorized disclosure of the classified material specified above would cause harm to relations with the Government of France and diminish the willingness of French and other officials to conduct confidential diplomatic business with U.S. representatives.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

09PRAGUE88 is an official telegram from Embassy Prague, dated February 12, 2009 to the Department of State. Three pages. The telegram was properly classified CONFIDENTIAL under E.O. 12958 at the time it was generated. The telegram remains CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b)(d).

IMPACT OF RELEASE

The telegram reports a private discussion between a named Czech official and an Embassy officer about a proposal advanced by a third country. The Czech Republic at the time held the Presidency of the European Union (EU), and the discussion involved both Czech and EU policy. Unauthorized disclosure of the classified material specified above would cause harm to relations with the Government of the Czech Republic and diminish the willingness of Czech and other officials to conduct confidential diplomatic business with U.S. representatives.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

09PRISTINA58 is an official telegram from Embassy Pristina dated February 12, 2009 to the Department of State. Five pages. The telegram was properly classified CONFIDENTIAL in

part under E.O. 12958 at the time it was generated. Portions of the telegram remain CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b)(d).

IMPACT OF RELEASE

The telegram concerns the Kosovo Property Agency (KPA), which is charged with resolving real property claims resulting from the armed conflict in Kosovo. Classified portions report the views of named foreign officials who participated in a private meeting of stakeholders in the KPA as well as the frank personal views of a named former international official. Classified portions also contain Embassy comments, sometimes critical of foreign governments and institutions. Unauthorized disclosure of the classified material specified above would cause harm to relations with the Governments of Kosovo and Serbia and diminish the willingness of officials from foreign governments and international organizations to conduct confidential diplomatic business with U.S. representatives.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

09RIYADH1156 is an official telegram from Embassy Riyadh, dated September 5, 2009 to the Department of State. Three pages. The telegram was properly classified CONFIDENTIAL under E.O. 12958 at the time it was generated. It remains CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b) and (d).

IMPACT OF RELEASE

The document contains a report of a conversation between an Embassy Officer and a senior official of the Saudi Ministry of Foreign Affairs on bilateral and sensitive regional matters. The Saudi official spoke in the expectation that the diplomatic exchange would be treated as confidential. Unauthorized disclosure of the classified material specified above would cause harm to relations with the Government of the Kingdom of Saudi Arabia and inhibit the ability of U.S. officials to conduct confidential business with that government.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

09SANTIAGO831 is an official telegram from Embassy Santiago, dated September 4, 2009 to the Department of State. Three pages. The telegram was properly classified CONFIDENTIAL E.O. 12958 at the time it was generated. The telegram remains CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b)(d).

IMPACT OF RELEASE

The message describes the U.S. Ambassador's confidential conversation with a leading Chilean politician who offers candid views on other Chilean politicians and on relations with third countries. The frank discussion took place with an expectation of confidentiality. The subjects included sensitive regional issues and the local political scene. Unauthorized disclosure

of the classified material specified above would cause harm to relations with the Government of Chile and diminish the willingness of Chilean political leaders to offer information and to conduct confidential diplomatic business with U.S. officials.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

09SANTIAGO833 is an official telegram from Embassy Santiago, dated September 4, 2009 to the Department of State. Seven pages. The telegram was properly classified CONFIDENTIAL in part under E.O. 12958 at the time it was generated. Portions of the telegram remain CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b)(d).

IMPACT OF RELEASE

Those portions describe the U.S. Ambassador's conversation with a Government of Chile official on Chilean relations with third countries and Chilean views on sensitive regional developments. It took place in a confidential environment that permitted each official to speak frankly. Most of the message deals with Chile's participation in UNASUR, the Union of South American Nations, and the country's relationship with other member states. Unauthorized disclosure of the classified material specified above would cause harm to relations with the Government of Chile and diminish its officials' willingness to conduct confidential diplomatic business with U.S. officials, to the detriment of our interests.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

09SANTIAGO835 is an official telegram from Embassy Santiago, dated September 4, 2009 to the Department of State. Five pages. The telegram was properly classified CONFIDENTIAL in part under E.O. 12958 at the time it was generated. Portions of the telegram remain CONFIDENTIAL under E.O. 13526 under Section 1.4 (b).

IMPACT OF RELEASE

Those portions describe the U.S. Ambassador's confidential conversation with a prominent Chilean politician on the capabilities of another Chilean leader. The comments are sensitive and were given with the expectation of complete confidentiality. Unauthorized disclosure of the classified material specified above would cause harm to relations with the Government of Chile and diminish the willingness of Chilean leaders to conduct confidential diplomatic business with U.S. officials.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

09SANTODOMINGO1017 is an official telegram from Embassy Santo Domingo, dated September 4, 2009 to the Department of State. Four pages. The telegram was properly classified CONFIDENTIAL under E.O. 12958 at the time it was generated. The telegram remains CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b)(d).

IMPACT OF RELEASE

The message describes the U.S. Charge's conversation with a Government of the Dominican Republic official on Dominican judicial independence and reform and on sensitive corruption and extradition cases. It took place in a confidential environment that permitted each official to speak frankly. Included are sensitive comments concerning the workings of the judiciary and the Embassy's assessment. Unauthorized disclosure of the classified material specified above would cause harm to relations with the Government of the Dominican Republic and diminish its officials' willingness to conduct confidential diplomatic business with U.S. officials, to the detriment of our interests.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

09STATE92632 is an official telegram from the Department, dated September 4, 2009 to the Embassy in Moscow. Four pages. The telegram was properly classified SECRET in part under E.O. 12958 at the time it was generated. Portions of the telegram remain SECRET under E.O. 13526 under Section 1.4 (d).

IMPACT OF RELEASE

The telegram instructs the Embassy on behalf of the Department of Defense (DOD) to present a draft text to the Russian Government pursuant to a portion of a recently concluded U.S.-Russian agreement on goods transiting Russia en route to Afghanistan. Portions remaining SECRET reveal certain bases for the U.S. position as stated in the draft text. (Release of portions of previously classified portions would require DOD concurrence.) Unauthorized disclosure of the classified material specified above would adversely impact the U.S. ability to secure from the Russians important national security objectives in Afghanistan as well as our diplomats' conduct of future discussions/negotiations with the Russians.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

09STATE92641 is an official telegram from the Department, dated September 4, 2009 to Embassy Colombo and a number of other posts. Six pages. The telegram was properly classified CONFIDENTIAL in part under E.O. 12958 at the time it was generated. Portions of the telegram remain CONFIDENTIAL under E.O. 13526 under Section 1.4 (d).

IMPACT OF RELEASE

The telegram instructs Embassy Colombo to make a demarche to the Government of Sri Lanka, with other posts making supporting demarches to a number of other governments, concerning the situation of persons displaced in Sri Lanka during the final days of the recently concluded conflict with Tamil Tiger rebels. The portions which remain CONFIDENTIAL discuss the nature of the Department's concern and detail the specific diplomatic points to be made to the Government of Sri Lanka and to other relevant governments of whom we request

particular actions. Unauthorized disclosure of this classified material would damage relations not only with the Government of Sri Lanka but also potentially between other governments and Sri Lanka.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

09STATE92655 is an official telegram from the Department of State, dated September 4, 2009 to Embassy Tegucigalpa. Five pages. The telegram was properly classified CONFIDENTIAL in part under E.O. 12958 at the time it was generated. Portions of the telegram remain CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b)(d).

IMPACT OF RELEASE

Those portions describe the U.S. Secretary of State's confidential conversation with the President of Honduras on sensitive negotiations on the peaceful restoration of democratic order in Honduras and on the views of third countries on developments in Honduras. It took place in a confidential environment that permitted each to speak frankly. Commitments were made on each side. Unauthorized disclosure of the classified material specified above would cause harm to relations with the Government of Honduras and diminish its officials' willingness to conduct confidential diplomatic business with U.S. officials.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

09STATE92657 is an official telegram from the Department of State, dated September 4, 2009 to the Embassies in Moscow, Kyiv, and Astana. Four pages. The telegram was properly classified CONFIDENTIAL in part under E.O. 12958 at the time it was generated. Portions of the telegram remain CONFIDENTIAL under E.O. 13526 under Sections 1.4 (a)(b)(d)(e).

IMPACT OF RELEASE

The telegram instructs the recipients to deliver a confidential message to parties to the Strategic Arms Reduction Treaty (START), which expired on December 5, 2009. Those portions convey internal communications of the Joint Compliance and Inspection Commission (JCIC) created by START. Unauthorized disclosure of the classified material specified above would harm relations with the other members of the JCIC and would assist foreign governments that are not parties to START to obtain information about U.S. strategic missiles.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

09TEGUCIGALPA891 is an official telegram from Embassy Tegucigalpa, dated September 4, 2009 to the Department of State. Five pages. The telegram was properly classified CONFIDENTIAL in part under E.O. 12958 at the time it was generated. Portions of the telegram remain CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b)(d).

IMPACT OF RELEASE

Those portions describe sensitive materials provided in confidence by members of the de facto Government of Honduras to U.S. officials and information about the de facto Government's investigation of officials of the former government. It includes Embassy speculation concerning charges made. Unauthorized disclosure of the classified material specified above would cause harm to relations with the Government of Honduras and diminish the willingness of political contacts to conduct confidential diplomatic business with U.S. officials and to provide information.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

09TEGUCIGALPA892 is an official telegram from Embassy Tegucigalpa, dated September 4, 2009 to the Department of State. Two pages. The telegram was properly classified CONFIDENTIAL in part under E.O. 12958 at the time it was generated. Portions of the telegram remain CONFIDENTIAL under E.O. 13526 under Section 1.4 (d).

IMPACT OF RELEASE

The message describes possible arrangements for a prominent European leader to visit Honduras and the Embassy's recommendations regarding the appropriateness of such a visit. The visit was planned by backers of the coup which toppled the legitimate Honduran Government in 2009. Unauthorized disclosure of the classified material specified above would cause harm to relations with the Government of Honduras and diminish the willingness of prominent Honduran leaders to provide information and to conduct confidential diplomatic business with U.S. officials.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

10BRUSSELS382 is an official telegram from the U.S. Mission to the European Union in Brussels, dated March 30, 2010 to the Department of State. Four pages. The telegram was properly classified CONFIDENTIAL in part under E.O. 12958 at the time it was generated. Portions of the telegram remain CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b)(d).

IMPACT OF RELEASE

Classified portions report the views of named European Union (EU) officials about the situation in Yemen and plans for additional EU assistance. The EU officials' critical assessments of Yemen were intended to be held in confidence by the U.S. government. Unauthorized disclosure of the classified material specified above would cause harm to relations with the European Union and diminish the willingness of European Union and other foreign officials to conduct confidential diplomatic business with U.S. representatives.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

10GENEVA347 is an official telegram from the U.S. Mission in Geneva, dated March 30, 2010 to the Defense Intelligence Agency (DIA) and other addressees. Thirteen pages. The telegram was properly classified SECRET in part under E.O. 12958 at the time it was generated. Portions of the telegram remain SECRET under E.O. 13526 under Sections 1.4 (b)(d).

IMPACT OF RELEASE

The telegram reports on a meeting between U.S. and Russian representatives negotiating an agreement to limit strategic arms. The negotiations were conducted in the expectation of confidentiality. Unauthorized disclosure of the classified material specified above would cause harm to relations with the Government of Russia and diminish the willingness of Russian and other officials to conduct confidential diplomatic business with U.S. representatives.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

10LIMA333 is an official telegram from Embassy Lima, dated March 29, 2010 to the Department of State. Six pages. The telegram was properly classified CONFIDENTIAL in part under E.O. 12958 at the time it was generated. Portions of the telegram remain CONFIDENTIAL under E.O. 13526 under Section 1.4 (d).

IMPACT OF RELEASE

Those portions provide an overview, in preparation for a visit by the U.S. Assistant Secretary of State for Western Hemisphere Affairs, of the sensitive political, security and economic challenges facing Peru and U.S.-Peruvian relations. It includes an assessment of counter-narcotic programs and the strength of public institutions. Unauthorized disclosure of the classified material specified above would cause harm to relations with the Government of Peru and diminish the willingness of sources to continue to provide such information or to conduct confidential diplomatic business with U.S. officials.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

10PRETORIA636 is an official telegram from Embassy Pretoria, dated March 30, 2010 to the Department of State. Five pages. The telegram was properly classified CONFIDENTIAL under E.O. 12958 at the time it was generated. It remains CONFIDENTIAL under E.O. 13526 under Section 1.4 (d).

IMPACT OF RELEASE

The cable reports on a sensitive internal matter involving issues within the ruling party, and includes unusually candid Embassy analysis of those matters. Unauthorized disclosure of the material would cause harm to relations with the Government of South Africa and hinder the

ability of U.S. officials to conduct daily business with members of the host government, as well as the leaders of the party.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

10RABAT294 is an official telegram from Embassy Rabat, dated March 30, 2010 to the Department of State. Twelve pages. The telegram was properly classified SECRET in part under E.O. 12958 at the time it was generated. Portions of the telegram remain SECRET under E.O. 13526 under Section 1.4 (d).

IMPACT OF RELEASE

The document describes the Embassy's approach to cooperation on counterterrorism with the Government of Morocco. Still-sensitive portions draw on intelligence and other delicate information to describe the terrorist threat in Morocco. Also contained are some sensitive measures the U.S. and Morocco are taking to cooperate in anti-terrorism activities. Unauthorized disclosure of the classified material specified above would cause serious harm to relations with the Government of the Kingdom of Saudi Arabia and hinder our efforts to obtain further cooperation in the area of anti-terrorism.

DOCUMENT IDENTIFICATION AND CLASSIFICATION

10TOKYO627 is an official telegram from Embassy Tokyo, dated March 29, 2010 to the Department of State. Four pages. The telegram was properly classified CONFIDENTIAL in part under E.O. 12958 at the time it was generated. Portions of the telegram remain CONFIDENTIAL under E.O. 13526 under Sections 1.4 (b)(d).

IMPACT OF RELEASE

This telegram describes confidential discussions between a U.S. Assistant Secretary of Defense and a senior Japanese Defense official concerning difficult bilateral defense arrangements related to U.S. forces in Okinawa. The Government of Japan (GOJ) observes a 30 year rule for declassification of sensitive substantive diplomatic conversations and the unauthorized disclosure of this classified material would cause harm to U.S. relations with the GOJ and lessen Japanese officials' trust and confidence in conducting confidential diplomatic business with U.S. officials.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the information provided herein is true and correct to the best of my knowledge.

Patrick F. Kennel

Executed this 30th day of April 2011.

Attachment C

UNITED STATES

v.

MANNING, Bradley E., PFC

U.S. Army, xxx-xx

Headquarters and Headquarters Company, U.S.

Army Garrison, Joint Base Myer-Henderson Hall,

Fort Myer, VA 22211

DEFENSE REQUEST FOR
ARTICLE 32 WITNESSES

DATED: 2 December 2011

On behalf of PFC Bradley E. Manning, his civilian counsel, David E. Coombs requests the attendance of each of the below listed witnesses for the following reasons:

a) In order to inquire into the truth of the matter alleged in the charges, consider the form of the charges, and assist the Investigating Officer in making recommendations as to disposition of the charges. *See* Rule for Courts-Martial (R.C.M.) 405(a);

b) In order to serve as a means of discovery for the defense. The defense has been unable to speak with several of the listed witnesses due to their lack of cooperation with requests to be interviewed prior to the Article 32 hearing. *See* R.C.M. 405(a) Discussion (stating the "investigation also serves as a means of discovery" for the defense);

c) In order to present matters in mitigation of the charged offenses. R.C.M. 405(f) (stating an accused has the right to present evidence in defense, mitigation, and extenuation); Article 32(b), Uniform Code of Military Justice (UCMJ) (stating an accused may "present anything he may desire in his own behalf, either in defense or mitigation, and the investigation officer shall examine available witnesses requested..."); *United States v. Garcia*, 59 M.J. 447, 451 (C.A.A.F. 2004) (ruling that an accused has the right to present anything he may desire in his own behalf at an Article 32 in defense or mitigation);

d) In order to inquire into the issues of unlawful command influence and unlawful pretrial punishment in violation of Articles 13 and 37 of the UCMJ. *See* R.C.M. 405(e) Discussion (stating that inquiry in to other issues such as legality of searches or the admissibility of evidence is proper by an Article 32 Investigating Officer).

- 1) SA Toni M. Graham, 102nd MP Detachment, 1314 Lyman Road, Schofield Barracks, Hawaii, 96857, (808) 655-1776, toni.graham@us.army.mil. SA Graham is one of the law enforcement agents that conducted work on this case. SA Graham was the primary agent involved in the initial investigation of the case beginning on 25 May 2010. SA Graham will testify about the investigative steps taken from the time of the

initial involvement until the matter was transferred to the Computer Crime Investigation Unit (CCIU) on 23 June 2010.

- 2) SA Mark A. Mander, GS13, 1 Rock Island Arsenal, Rock Island, Illinois 61299-5000, (309) 782-3967, mark.mander1@us.army.mil. SA Mander is one of the law enforcement agents that conducted work on this case for the CCIU. He is the drafter of most of the CID Reports of Investigation. He is part of a joint investigation by CID and the Department of State (DOS) Diplomatic Security Service (DSS). Under the cooperative investigation agreement, CID is the lead investigative agency with primary responsibility for coordinating all leads affecting the U.S. Army, and DSS has responsibility for leads involving the DOS. The Federal Bureau of Investigation (FBI) later joined as a joint partner in the investigation with responsibility for providing counterespionage expertise, investigative support, and as the lead agency for all civilian related leads.
- 3) SA Calder L. Robertson III, GS13, Computer Crime Investigation Unit (CCIU), Manheim, Germany, DSN 314-380-5355, calder.robertson@us.army.mil. He extracted the hard drives from the two SIPR and one NIPR computers collected from the SCIF, the personal laptop of SSG Bigelow, and the personal external hard drive of PFC Manning. SA Robertson will testify about his involvement in the investigation and the steps he took from the initial reporting of the alleged incident on 25 May 2010 until present regarding the forensic imaging and evidence collection of electronic media seized in Iraq.
- 4) SA David S. Shaver, GS13, Computer Crimes Investigative Unit, 27130 Telegraph Road, Quantico, Virginia 22134, (571) 805-4481, david.s.shaver@us.army.mil. SA Shaver is a forensic examiner who conducted an examination of the computers used by PFC Manning within the T-SCIF, 44 loose hard drives seized from 2nd BCT, digital media collected from PFC Manning's Aunt's residence, various log files from CIDNE Iraq and CIDNE Afghanistan, log files from the Army Counterintelligence Center (ACIC), and his personal computer equipment. SAC Shaver completed 19 classified CCIU reports and will testify about the nature of his forensic examination and the results of his examination.
- 5) SA Charles T. Ames Jr., GS13, 9805 Lowen Road, Fort Belvoir, Virginia 22060, (703) 805-2696 or (571) 305-4483 charles.ames@us.army.mil. SA Ames is one of the law enforcement agents that conducted work on this case. He interviewed numerous witnesses during the CCIU investigation from 2d BCT. He also detailed the collection of classified information for the Information Review Task Force's damage assessment.
- 6) SA Alfred L. Williamson, Digital Forensics and Research Branch, Computer Crimes Investigative Unit, 27130 Telegraph Road, Quantico, Virginia 22134, (571) 305-4488, al.williamson@us.army.mil. A forensic examiner who examined the U.S. Government Supply Annex NIPRNET computer (Unclassified), utilized by PFC

Bradley Manning. He will testify about the nature of his forensic examination and the results of his examination. He will also testify about his forensic analysis and evidence collection from PFC Manning's cellular telephone, the computer assigned IP address 144.107.17.19 and the forensic imaging of the Wikileaks website.

- 7) SA Troy M. Bettencourt, Computer Crimes Investigative Unit, 27130 Telegraph Road, Quantico, Virginia 22134 (571) 305-4474, troy.m.bettencourt@us.army.mil. SA Bettencourt is one of the agents that worked extensively on this case for CCIU to include interviewing multiple witnesses in the case and conducting field investigation for the CCIU. SA Bettencourt will testify about his involvement in the case and the investigative steps that he took.
- 8) SA Ronald K. Rock, United States Department of State, Diplomatic Security Service Office of Professional Responsibility, (571) 345-2272 (W), (703) 678-7851 (W), (443) 995-6819 (C). SA Rock is one of the law enforcement agents that conducted work on this case. The defense requests that SA Rock be instructed to provide the Investigating Officer and the defense with a complete copy of DSS case file number PR-2010-00076 and any other collateral investigations by the DSS related to this case at least two weeks prior to the start of the Article 32 hearing.
- 9) SA Patrick Wheeler, Federal Bureau of Investigation, the defense does not have contact information for SA Wheeler, but believes that he would be the best representative from the FBI to discuss the initial involvement of the FBI and their subsequent investigation. SA Wheeler is one of the law enforcement agents that conducted work on this case. He was the first agent to make contact with Adrian Lamo on 25 May 2010 in order to obtain the alleged chat logs between Mr. Lamo and PFC Manning. The defense requests that SA Wheeler be instructed to provide the Investigating Officer and the defense with a complete copy of FBI case file number 242460 and any other collateral investigations by the FBI related to this case at least two weeks prior to the start of the Article 32 hearing.
- 10) CPT Martin Leibman, Kenner Army Health Clinic, 700 24th Street, Fort Lee, Virginia 23801, (804) 734-9143, martin.leibman@us.army.mil. Psychologist that performed a command-referred behavioral health evaluation BHE on PFC Manning 24 December 2009. CPT Leibman will testify that he determined PFC Manning appeared to be under a considerable amount of stress at the time of his evaluation. He will also testify that PFC Manning did not appear to have any social support system and seemed hypersensitive to any criticism. He recommended that PFC Manning be moved from the night shift to the day shift and that he be given a low intensity duty for the immediate future. He also determined that PFC Manning was potentially dangerous to himself and others and recommended removal of his weapon or removal of the bolt from his weapon along with increased monitoring and supervision. He will testify that he used a behavioral health evaluation form that was not approved, MEDCOM Form 4038. On that form, however, there was a block that permitted the behavioral health provider to indicate that the Soldier being evaluated was not

suitable for continued access to classified material. Despite having this option, CPT Lieberman did not check this box. He will testify that he does not remember why he did not check that box. Had he done so, PFC Manning's security clearance would have been revoked and he would not have had access to classified materials after that date.

- 11) CPT Michael E. Worsley, 1908th MC Detachment, 500 SW 42nd Street, Topeka, Kansas 66609-1241, (602) 748-7691, michael.worsley@us.army.mil. He will testify that he treated PFC Manning on numerous between 30 December 2009 and 26 May 2010. As part of his treatment, CPT Worsley considered letters written by PFC Manning's noncommissioned officer in charge, then MSG Adkins. He will testify that now SFC Adkins expressed concern about PFC Manning's mental and emotional stability in the three letters noting that PFC Manning appeared to be suffering greatly and also having difficulty sharing his problem. CPT Worsley will testify that he contacted SFC Adkins after each evaluation was completed in order to give him a summary of the information from his review and to allow SFC Adkins to share his thoughts and concerns. Despite the behavior of PFC Manning, CPT Worsley will admit that he never made a recommendation to the command concerning whether to suspend PFC Manning's security clearance. He did, however, speak with MAJ Clifford Clausen and 1SG Eric Usbeck about his reviews and PFC Manning's need for ongoing long term psychotherapy to explore and understand his issues.
- 12) CPT Edan A. Critchfield, Department of Behavioral Medicine, 11050 Mt. Belvedere Blvd. Fort Drum, New York 13602, (315) 772-9977, edan.critchfield@us.army.mil. He is a psychiatrist that performed a behavioral health evaluation on PFC Manning on 22 May and 28 May 2010. He will testify that SFC Adkins had expressed concern to him about PFC Manning around 10 April 2010, and had given him a memorandum where he documented his concerns. Since PFC Manning's primary clinician, CPT Worsley, was on leave at the time, he completed the command directed mental health evaluation. Based on his interview of PFC Manning and review of his records, CPT Critchfield will testify that he determined PFC Manning was at risk to himself and others and recommended that he not have an operable weapon. He will testify that he considered making a recommendation as to PFC Manning's access to classified information in his 22 May 2010 evaluation but did not do so because he had been informed that PFC Manning was no longer allowed in the T-SCIF. Instead, he deleted the block referencing access to classified information on the MEDCOM Form 4038 in order to have more space to write notes on the form. CPT Critchfield will testify that he did receive training on the subject of Soldier suitability for access to classified information. The training that he received was informal "on-the-job" training during his residency. He will testify that the factors suggested to look for in making suitability determinations were (1) reliability, (2) stability, and (3) judgment. On his 28 May 2010 mental health evaluation, CPT Critchfield will testify that he made a recommendation that PFC Manning was not suitable for continued access to classified material and that his security clearance should be rescinded.

- 13) COL David M. Miller, Brigade Modernization Command, Fort Bliss, Texas 79916, (915) 569-7205, david.miller3@us.army.mil, Former 2nd BCT Commander. He will testify that the brigade did not want to take the wrong personnel forward, nor did the brigade want to leave a large rear D behind for a small staff to manage and lead. He expected the leaders in the Brigade to identify those soldiers who should not deploy. He will testify that his S-2, the officer in charge of PFC Manning, MAJ Clifford Clausen, was not up to the standard of performance that he expected out of someone in that position. Based upon his discussions with then LTC Paul Walter and LTC Brian Kerns, COL Miller decided it was best to remove MAJ Clausen from his position as the S2 and place CPT Lim into that job. He will testify that from his perspective, the issues surrounding PFC Manning should have been something that the S2 personnel would have been more involved in than the company. However, there were several issues that may have impacted the response to PFC Manning's issues. First, during that time period the former company commander, MAJ Elijah Dreher was relieved over property accountability and due to the fact he was not making good decisions. Second, MSG Adkins, the NCOIC in the S2 Section, was "marginal, but not bad enough to either relieve or replace. He will testify that then MSG Adkins was technically competent but that he lacked leader skills expected of a MSG. He will also testify that commanders (in conjunction with their unit security manager) are allotted 30 days to submit an initial DA 5248-R following the discovery of credible derogatory information on a Soldier. After the initial DEROG is submitted and processed by SID/CCF, the unit has 90 days to submit a follow-up 5248-R if there is a pending investigation or adverse action taken (e.g., summary court-martial). Once the investigation/proceedings are completed and the Soldier has been cleared/charged of offense, the unit must submit a final DEROG. In this case, he will testify that then MSG Adkins failed to keep the chain of command informed of PFC Manning emotional and mental condition. He will testify that this failure resulted in the command not submitting a DEROG in a timely manner.
- 14) LTC Brian Kerns, Old Dominion University, 4th Brigade Cadet Command, Rollins Hall, Room 119, Norfolk, Virginia 23529, (757) 683-3668, brian.kerns@us.army.mil, (Former Executive Officer for 2nd BCT), He will testify that he was MAJ Clausen's direct supervisor. He believed that MAJ Clausen could not provide COL Miller with accurate or timely estimates or intelligence, and could not talk to COL Miller in a way that served the Commander's needs. The brigade commander finally lost confidence in MAJ Clausen and made the decision after approximately 6 months to move him. He will testify that the unit did not conduct a formal relief for cause, but moved him to a transition team. According to LTC Kerns, MAJ Clausen's performance was weak, but not so weak as to warrant a relief for cause. LTC Kerns did not believe MAJ Clausen was not a strong leader. He tried to decentralize operations but didn't have enough oversight to control. He empowered junior members who were too inexperienced to do the job and did not step in to correct when they made mistakes. He will testify that MAJ Clausen was unable to mentor or develop younger officers and didn't have much direct control over the shop. He will also testify that MAJ Clausen was handicapped by weak NCO leadership in his shop.

Specifically, his NCOIC, then MSG Adkins was not an effective leader. In his opinion, both MAJ Clausen and MSG Adkins were weak leaders. He will testify that he was unaware of any leadership guidance provided in the S2 sections regarding enlisted personnel management. He will testify that it did not surprise him that MAJ Clausen put out information that Warrant Officers and Noncommissioned Officers were to defer all management responsibilities to MSG Adkins. He will testify that perhaps the command was too generous with MAJ Clausen and that removing him from his position earlier would have been advantageous. He will testify that he believes PFC Manning's mental and emotional issues were more than enough to put others at risk and should have resulted in an immediate DEROG. He will testify that he did not know anything about PFC Manning's conduct until a recommendation for separation was made by the chain of command. He will testify that none of the mental or emotional health concerns, prior to May of 2010, made it to his level. LTC Kerns will testify that the failure to properly DEROG PFC Manning's was the unit's biggest failure. He believes that the unit should have pulled PFC Manning's access to classified information much earlier. He will testify that the unit should have recognized him as needing help and that his condition made him unfit for service as an intelligence analyst. He will also testify that the assistant S6 for the brigade, CPT Cherepko came to him with concerns about unauthorized personal media on SIPRNet machines. According to CPT Cherepko, personnel were putting unauthorized media on computers such as programs, games, videos, and music. LTC Kerns will testify that it was fairly common when the unit arrived to see games, music and movies on the SIPRNet. He believed that it was fairly common across Iraq. He will testify that he tried to get the staff to do the right thing, but media on the SIPRNet continued to be the standard. He will testify that at no point was UCMJ punishment applied to those who were placing unauthorized information on SIPRNet. He will acknowledge that with respect to the media on the SIPRNet, he believed that the Army had become too comfortable working on SIPRNet while deployed. It is his opinion that this may have bred some complacency because of the ease of access. He believes that most Soldiers did not realize that placing music and other media on SIPRNet computers was wrong because of how prevalent those items were across Iraq. He will also testify that after PFC Manning was arrested, COL Miller ordered him to take a complete look at INFOSEC across the brigade. He formed a working group consisting of the SGM, S2, S6 and IO personnel to look at how the brigade was operating. Based upon this review, the S6 removed universal ability to write to disks; there was additional compartmentalizing of information within the BCT based on a need to know; the S6 instructed staff on how to lock out directories and the brigade established an SOP on the implementation for reviewing infractions for potential DEROG actions.

- 15) MAJ Elijah A. Dreher, (706) 791-8220, elijah.dreher@us.army.mil (Former IHIC, 2BCT Commander). He will testify that he had very little interaction with the S2 shop. He will also testify about the guidance he gave regarding whether soldiers would deploy. He will testify that he was not made aware of any effort to keep PFC Manning from deploying. He will testify that his understanding was that PFC

Manning's issues came about after deploying. He was not aware that SFC Adkins recommended to PFC Manning that he self-refer to Mental Health or that PFC Manning even went to Mental Health prior to the deployment. He will also testify that he was not adequately informed of PFC Manning's mental health issues by MAJ Clausen or SFC Adkins. *His TDS counsel is CPT Steve Suchomski at Fort Gordon TDS (706) 791-3217 steven.suchomski@us.army.mil.*

- 16) MAJ Clifford D. Clausen, National Radio Frequency COMECT Center, clifford.clausen@us.army.mil, (303) 677-1190. He was the 2/10 BCT S-2 until being replaced by CPT Lim. He will testify that SFC Adkins did tell him about an outburst by PFC Manning before the deployment, but that he does not remember SFC Adkins having a conversation with him about leaving PFC Manning on rear detachment. He will also testify that he did not recall talking to the company commander about PFC Manning's behavioral health issues. He will testify that it was his practice to not take many issues outside of the S2 Shop, and that he believed the supervision policy of having every issue go through SFC Adkins was fine. Finally, he will testify that music CDs were allowed in the T-SCIF.
- 17) CPT Barclay D. Keay, HHC, 4-31 Infantry Battalion, 2nd Brigade Combat Team, 10th Mountain Division, Building 10210 North Riva Ridge, Fort Drum, New York 13682, (603) 520-3219, barclay.keay@us.army.mil, (night shift OIC for the T-SCIF for 2nd BCT). He will testify that he believed PFC Manning was good at his job and he was also impressed with PFC Manning's computer skills. Despite this belief, he will testify that PFC Manning should not have been a soldier as he seemed to act immature. He will testify that you could not demand things from PFC Manning as he had a soft skin and was not receptive to commands. He will testify that there was a lack of leadership on the night shift which PFC Manning worked on. He will testify that from his perspective PFC Manning wanted to be a good soldier, but naturally was not good at the basic soldier skills. He will also testify that music, movies, and games were common on SIPRNet machines. He will testify that he went to a lot of people to try to determine if it was a problem to have media on SIPRNet because he did not think it was proper. He will testify that he spoke with several individuals within the T-SCIF about this issue, but no one could provide him with an answer. He will testify that eventually it became the norm to see soldiers listening to music, watching movies, and playing games on SIPRNet machines.
- 18) CPT Matthew W. Freeburg, Bldg 10112, 4th Armored Division Road, Fort Drum, New York 13602, (915) 588-8102, matthew.freeburg1@us.army.mil. Company commander and property book holder for all the computers within HHC, 2BCT. He will testify about providing commander's authorization to seize and search the computers PFC Manning was known to work on. He also provided search authorization to search PFC Manning's room. He will testify that he never received any information from the S2 Section concerning any of PFC Manning's mental or emotional issues until after the alleged assault of SPC Showman. He will testify that after the alleged assault, he removed PFC Manning from the T-SCIF and sent him to

work in the Supply Room. He then gave PFC Manning an Article 15 reducing him from SPC to PFC. Along with the Article 15, CPT Freeburg will testify that he filled out a DEROG form in order to suspend PFC Manning's security clearance. CPT Freeburg will testify he then went to CPT Worsley at Behavioral Health to discuss PFC Manning's condition. CPT Worsley told him that PFC Manning's troubles were deeper than the Army could fix and that he should be separated. CPT Freeburg will testify that he then sent PFC Manning to CPT Critchfield for an evaluation. Based upon the mental health recommendations, CPT Freeburg will testify that he initiated the chapter paperwork. CPT Freeburg will testify that he believed it was shocking that something more serious had not been done to address PFC Manning's behavioral issues prior to him assaulting SPC Showman and receiving an Article 15. He will also testify that he was aware that personnel had placed video games, movies, and music on the SIPRNet drive.

- 19) CPT Steven J. Lim, First Army Division East, G-2, 4550 Llewellyn Drive, Fort Meade, Maryland 20755, (301) 833-8461, steven.lim@us.army.mil. He will testify that he knew about PFC Manning emotional and mental health issues before taking over as the brigade S2. Additionally, he will testify that PFC Manning was counseled on a few occasions due to his emotional and mental issues and that he was informed that PFC Manning was seeing a doctor about his condition. Despite this knowledge, CPT Lim will testify that he was not aware of the full extent of PFC Manning mental health issues. He will testify that once he learned of the entire facts surrounding PFC Manning, he believed that PFC Manning should not have been deployed. He will also testify that he gave a negative counseling to SFC Adkins for failing to inform him of the various issues PFC Manning was struggling with during the deployment. CPT Lim will testify that soldiers were authorized to bring music CDs to listen to in the T-SCIF. CPT Lim will also testify that the T-SCIF failed to draft a Standard Operating Procedure (SOP). CPT Lim will testify that he passed the link to the U.S. Embassy cables to the various analysts, including PFC Manning. He disseminated the link to the BCT S2 shop and the BN S2's sometime in the beginning of January 2010 in order to allow the analysts to better understand the Iraqi political situation. He will also testify that the comments in the press that say the release of the CIDNE database compromised our key sources and put the lives of sources at risk are inaccurate. Any name in the CIDNE database (Iraq and Afghanistan) were just names put in by a soldier who spoke to some local national and not sources for the United States. CPT Lim believes that although a name may be in CIDNE, it was likely spelled phonetically and did not contain the full name of the individual. CPT Lim knows that he had the ability to pull 50 different ways to spell Muhammad when he would do a CIDNE database search. That fact there were so many different ways to spell Muhammad is indicative of the fact the names in the CIDNE database were not accurate accounts.

- 20) CPT Thomas M. Cherepko, NATO Force Command Madrid, Madrid, Spain 09649, (412) 387-3090, thomas.m.cherepko@us.army.mil. He was the assistant S-6 for the 2BCT. He will testify that the information assurance procedures were not being

followed by the brigade. He knew that Soldiers would go to the local market and buy movies, music and games and place the information on their SIPR and NIPR computers. He tried to address the issue but could not get any support from the leadership to enforce the standards. He raised the movie and music concern to the S6, MAJ Morrow, and the Brigade XO, LTC Kerns, but that nothing was done. When the mood struck him, he would scan the shared drive for music, movies and games and will testify that he would find it every day. Every time that he found unauthorized material on the SIPRNet, he would delete it. Occasionally, he would find a Soldier that would have a huge amount of unauthorized material on their computer - in one instance it was 500 Gigabytes of information, but nothing was done. He will testify that as the IASO he did not know that he needed to prepare a DoD Information Assurance Certification and Accreditation Process (DIACAP) packet for certification and accreditation of the brigade network. He will also testify that due to this failure, it was later determined that the brigade did not have an Approval to Operate (ATO) or an Interim Approval to Operate (IATO) for their network. Additionally, the brigade did not receive a formal IA certification and accreditation inspection during its tour, contrary to the guidance in MNF-I Directives. Finally, he will testify that he knew about personal software being loaded on the SIPRNet and he would remove the software when he came across it. *He is represented by CPT Michelle Borgnino at Fort Myer, (703) 696-6700, michelle.borgnino@us.army.mil.*

- 21) CPT Michael R. Johnson, 4th Brigade, 25th Airborne Infantry Division, Joint Base Elmendorf-Richardson, Alaska 99505, (907) 384-0265, michael.r.johnson9@us.army.mil. He will testify that SFC Adkins was in charge of all enlisted responsibilities. He will testify that whenever he engaged the Soldiers on issues as a leader that he was told to back off by SFC Adkins, CPT Lim, and MAJ Clausen. He will testify that the S2, MAJ Clausen, did not set standards for the unit. Based upon this lack of leadership, he will testify that a lot of conduct was ignored. He will testify that he remembers venting to MAJ Clausen and SFC Adkins about how nothing was being done to address PFC Manning's mental and emotional issues. He will state that when he addressed these concerns to MAJ Clausen and SFC Adkins that he was told that he needed to stay in his lane. After the change in leadership within the S2 Section, he will testify that all of the officers sat down to discuss soldier standards in an attempt to address substandard conduct. However, SFC Adkins objected to any changes and would not allow anyone to address the issues surrounding PFC Manning. As such, he will testify that nothing was done to address PFC Manning's mental and emotional issues.
- 22) 1LT Tanya Marie Gaab, HIIC, 525th BFSB, Fort Bragg, North Carolina (910) 396-5482, tanya.gaab@us.army.mil. She will testify that SFC Adkins was in charge of the administrative details and supervision of the soldiers within the S2 Section. She will testify that she was made aware of many of the issues surrounding PFC Manning when she arrived to the unit. In her opinion, PFC Manning should have been removed from his position in the T-SCIF early on in the deployment. However, she felt that the leadership within the S2 section was not really concerned with

disciplining Soldiers. She will testify that she asked SFC Adkins why PFC Manning was not removed from his position in the T-SCIF earlier, and that he told her that it was a manpower issue. She will testify that she believes that PFC Manning's issues were not taken seriously and no one took any steps to help him or even recognize that he needed help. She believes the unit failed to take proper action and failed to properly respond to the issues that PFC Manning was obviously struggling with both before and during the deployment.

- 23) 1LT Elizabeth A. Fields. (630) 615-8101, elizabeth.fields1@us.army.mil, as the Special Security Representative (SSR) for the T-SCIF and part of the Sunni Team. She will testify that she only received one hour of training at 10th MTN to be the SSR for the T-SCIF. Her training covered the basic rules and regulations for a SCIF at Fort Drum. She will testify that her training did not really cover ensuring the security of a T-SCIF. However, she will testify that she was only the SSR at Fort Drum. When her unit deployed to Iraq, she will testify that then MSG Adkins was the one that worked the security of the T-SCIF and she dealt with security clearances. She will testify that SFC Adkins did not receive any training to be the SSR. However, he just assumed the position under the approval of the S-2, MAJ Clausen. She will testify that she believed SFC Adkins provided terrible supervisory leadership. She thought he was a terrible leader because the problems within the unit were constantly being ignored. She will testify that it was obvious to everyone that PFC Manning was struggling with mental and emotional issues. However, she will testify that when she tried to deal with the issue and get PFC Manning help, she was told that it was an NCO problem and to stay out of it by SFC Adkins. She will also testify that she did not believe that MAJ Clausen had any type of management over the section. She also did not believe that the Company 1SG cared about the S2 section because they were not co-located. She will testify that she was aware of multiple issues with PFC Manning, but stated that PFC Manning stayed in the T-SCIF because SFC Adkins said that we needed personnel. She will testify that she believed that there was a lack of leadership across the board. She will testify that as leaders they should have pushed harder from the NCOs to the Officers. She will testify that she was puzzled why PFC Manning was not removed from the T-SCIF after previous behavior incidents that occurred between him and SPC Padgett in December of 2009. She will testify that it was simply accepted that people brought in CDs and DVDs into the T-SCIF. She believed that there was no unit training at 2/10 that focused on T-SCIF operations during the deployment.

- 24) CW2 Joshua D. Ehresman, 2nd BCT, 10th Mtn Hq. Fort Drum, NY 13602, (315) 774-2753 or (337) 353-9396, joshua.d.ehresman@us.army.mil. *He is represented by CPT Curtis A. Devlin, Fort Lee TDS, (804) 765-2290, curtis.devlin@us.army.mil.* He will testify that he was told by SFC Adkins and MAJ Clausen that he was not responsible for any personnel who worked in the S2 section. He will testify that on several occasions he returned to SFC Adkins and MAJ Clausen to clarify their expectations about his responsibilities regarding enlisted Soldiers and Officers and his non-role in soldier leadership was reinforced on each occasion. CW2 Ehresman was

aware of multiple emotional outbursts by PFC Manning. He will testify that prior to the deployment he recommended that PFC Manning should not deploy and expressed this directly to MAJ Clausen, CPT Martin and SFC Adkins. He will testify that he was told that PFC Manning would deploy due to manpower issues. He will testify that he witnessed an incident in December of 2009 by PFC Manning that required him to physically involve himself in the situation in order to ensure PFC Manning did not try to harm himself or others. After this emotional outburst, he will testify that he spoke to SFC Adkins and recommended that he take the bolt from PFC Manning's weapon, send him to mental health and then get him out of the Army. He also spoke with CPT Lim, CPT Martin and ISG Eric Usbeck about his concerns after the outburst by PFC Manning. He will testify that even after expressing these concerns, nothing was done.

- 25) MSG Eric H. Usbeck, Fort Bliss, Texas. (315) 681-7646. eric.usbeck@us.army.mil. (former ISG of HHIC, 2nd BCT). He will testify that prior to the deployment, he received occasional comments from SFC Adkins regarding PFC Manning's attitude and personal problems. However, he was never aware of any suggestion not to deploy PFC Manning. He will testify that he was made aware of one incident during the deployment involving PFC Manning by another soldier. MSG Usbeck then sought out SFC Adkins to clarify what this soldier had told him. After learning what happened, MSG Usbeck along with SPC Showman decided to counsel PFC Manning for about 45-60 minutes and referred him to Mental Health for evaluation. He will testify that could not recall if the referral was command directed or if Manning volunteered. He will testify that he later learned that PFC Manning had not gone to mental health as required. However, due to his transition, he will testify that he informed his replacement of the issue instead of attempting to address the issue himself.
- 26) MSG Mark S. Woodworth, Task Force 3, OPS GRP, JRTC, 1212 Port Arthur Terrace, Leesville, Louisiana 71446, (931) 249-6765. mark.woodworth@us.army.mil. He became the ISG of the company in March of 2010. He will testify that he was briefed on Manning having an issue with another soldier. He believed that PFC Manning had gone to Combat Stress and seen a provider. The next thing he heard about PFC Manning was the assault of SPC Showman. After the assault of SPC Showman, PFC Manning was moved to the Supply room. He will testify that SFC Adkins did not talk to him about removing the bolt from PFC Manning's weapon. He also does not recall any discussions about sending PFC Manning back to the States or chaptering him out of the Army. He will also testify about CID coming to the unit and searching PFC Manning's living quarters and work space.
- 27) SFC Paul David Adkins, HHC, 2nd BCT, Fort Drum, New York 13602, DSN 774-2753, paul.david.adkins@us.army.mil. *He is represented by TDS Counsel.* SFC Adkins will testify that he was PFC Manning's NCOIC. Once a MSG, SFC Adkins was administratively reduced by a board due to being derelict in his duties. The board

concluded that SFC Adkins failed to take proper steps in addressing PFC Manning's issues. SFC Adkins will testify that he was aware of the problems of PFC Manning. Over the course of several months, he will testify that he drafted three memorandums detailing various behavioral health concerns of PFC Manning. Despite this knowledge, SFC Adkins will testify that he failed to notify anyone of these concerns that could have taken steps to take care of PFC Manning and ensure that he was getting the help that he needed. Instead, he will testify that he simply allowed PFC Manning to continue to work in the T-SCIF as an intelligence analyst. SFC Adkins will testify that he assessed that PFC Manning was salvageable if he received and actively participated in extensive psychological therapy (1-2 times a week on an indefinite basis) coupled with responsive psychiatric evaluations, medication and follow-up adjustments on dosages.

- 28) SSG Lawrence Wayne Mitchell, HHC, 2nd BCT, Fort Drum, New York 13602, (315) 742-2755, lawrence.mitchell2@us.army.mil. SSG Mitchell will testify that he originally did not have supervisory responsibilities at the unit. After approximately 60 days, he was given responsibility for supervising two subordinate 35F Soldiers; one of these soldiers was PFC Manning. When SSG Mitchell got to the unit in May of 2009, he observed operations for approximately 90 days and then approached SFC Adkins to let him know his input about operations. SSG Mitchell will testify that he specifically told SFC Adkins that PFC Manning needed to be chaptered of the Army. SSG Mitchell believed that PFC Manning clearly was struggling with emotional issues that made him ill-suited for military service. This conversation occurred in June or July of 2009. SSG Mitchell will testify that he approached SFC Adkins monthly thereafter about separating PFC Manning from the Army but was aware that he could only take the issue to his supervisor so many times before it fell on deaf ears. SSG Mitchell will testify that he found an iPod on a bunk and looked through it to determine the owner. When SSG Mitchell viewed photos on the iPod, he noted that PFC Manning was attending what looked like a gay pride parade. He will also testify that he knew PFC Manning was suffering from extreme emotional issues. During the deployment, he found PFC Manning curled in the fetal position in the Brigade conference room, rocking himself back and forth. SSG Mitchell will testify that he was appointed as a Special Security Representative (SSR) on orders for the T-SCIF. The responsibilities for the SSR included reviewing security clearance requests, initiating DEROGs recommending security clearances for personnel in the S2 shop, producing an SOP and SCIF security. While he was appointed as a SSR, he will testify that he did not conduct those duties. SSG Mitchell will testify that he believes the reason PFC Manning was allowed to remain in the military and did not receive the help that he needed to deal with his issues was because SFC Adkins had influence over every action taken on personnel in the S2 section and it was his decision not to do anything.

- 29) SGT Rebecca M. Schwab, 211 Loudon Road, Concord, New Hampshire 03301, (603) 224-1590, rebecca.schwab@us.army.mil. She will testify that she has known PFC Manning since 2008. In the 2008 time frame, PFC Manning told her that he was

gay. She will testify that she believes that it was a huge issue for him and that he could not be true to himself without the risk of losing his job. She will testify that she believed that PFC Manning felt like he had no one to talk to. She believes that PFC Manning was very intelligent and knew a lot about the World issues. She feels that PFC Manning had a few emotional issues and these issues made it difficult for him to adjust to the military life.

- 30) SGT Daniel W. Padgett, B Company, 2nd BSTB, 10th Mountain Division, Fort Drum, New York 13602, (315) 772-2674, daniel.padgett1@us.army.mil, former supervisor of PFC Manning. He will testify that PFC Manning was a very good analyst, who was good with computers but timid and not good at public speaking. He will testify that he was assigned as the night shift NCOIC with then SPC Manning and SPC Cooley. He was assigned this position even though he had not yet been to any leadership schools. He will testify that there really was not anyone supervising the night shift. He will also testify that when he needed to counsel PFC Manning he went to SSG Balonek and asked him if he could counsel him. He will testify that he was given permission to handle disciplinary actions for PFC Manning by SFC Adkins and SSG Balonek. He will testify that he believed that he was in essence taking care of other NCOs soldiers and that PFC Manning should have been counseled by SSG Balonek. He will testify that during one counseling session in December of 2009, PFC Manning grabbed the table and flipped it. He will testify that PFC Manning did not approach him, but he was concerned when PFC Manning stepped towards the weapons rack. CW2 Ehresman grabbed PFC Manning from behind and held him until he calmed down. He will testify that although PFC Manning later apologized to him, that he believes PFC Manning should have been removed from the T-SCIF after the incident. Finally, he will testify that personnel in the T-SCIF were told that they could listen to music CDs and watch movies in the T-SCIF.

- 31) SGT David A. Sadtler, 709 MI Battalion, U.S. Army Garrison, Wiesbaden, (DSN) (314) 262-7183, david.sadtler@us.army.mil. He is a 35N – signal intelligence analyst. He will testify that he first met PFC Manning at a rotation at JRTC. He will testify that he believes that PFC Manning used to be a very happy and very hyper individual, but his leadership wore him down. He will state that PFC Manning was upset that no one cared about the mission. He also believed that the unit made it very difficult on PFC Manning as it seemed to outcast him as though they were trying to get him out of the Army. He will testify that a lot of people had support from other people, but that he didn't believe PFC Manning had any support from his chain of command. He will testify that he recalls an incident when PFC Manning found a report that apparently upset him. PFC Manning had found in the report that some Iraqis or possibly some Moroccans were being arrested at a printing press facility. SGT Sadtler will testify that attached to this report was some evidence which had been collected; however, this information was in Arabic. He will testify that PFC Manning had taken the time to have the document translated and tried to show the translation to his superiors. He will testify that PFC Manning was very upset about

the issue. He will testify that if there was a moment in which PFC Manning may have snapped, this would have been it. SGT Sadtler will testify that everyone stonewalled PFC Manning on the issue as no one thought it was a big deal. He will testify that the translation indicated that the individuals being arrested had printed documents that were questioning whether the Iraqi government was embezzling public funds.

- 32) SGT Lorena Cooley, HHC 2nd BCT, Fort Drum, New York, 13602, (315) 774-2959, lorena.cooley@us.army.mil. SGT Cooley will testify that she believes that PFC Manning was picked on by other because they assumed that he was gay. She will testify that SFC Adkins minimized a lot of things with PFC Manning and tried to keep things within the shop. SGT Cooley will testify that PFC Manning should have probably gotten help before they deployed. Finally, she will testify that Soldiers brought in CDs for music and movies and that this information was placed on the SIPRNet computers.
- 33) SGT Sheri M. Walsh, 13208 Burnes Lake Drive, Tampa, Florida 33612, (813) 988-6315, sheri.walsh@us.army.mil. SGT Walsh will testify that PFC Manning had conversations with her about relationship issues and the fact he was having gender identify issues. She will testify that PFC Manning spoke to her often about wanting to get an Honorable Discharge so that he could keep his Top Secret Clearance after his release from the Army. She will testify that she noticed that very few people would talk to PFC Manning. She will testify that every time that she saw PFC Manning, he was by himself. She will testify that others would make fun of PFC Manning's size and the fact that they believed he was gay. One time SGT Walsh saw PFC Manning coming out of his room; two soldiers pushed the door back into PFC Manning's face. She will testify that PFC Manning was obviously upset and embarrassed about having the door pushed back into his face. She will testify that instead of complaining about the conduct, PFC Manning simply said that he walked into the door by accident. SGT Walsh will testify that she believes PFC Manning was at a very confusing time in his life. She does not believe that the Army was a good fit for him based upon where he was at in his life.
- 34) SPC Jihreah W. Showman, Fort Drum, New York 13602, (918) 230-4069, jihreah.showman@us.army.mil. SPC Showman will testify about being aware of PFC Manning's emotional issues. She will testify that she went to SFC Adkins and recommended that PFC Manning not deploy due to his emotional issues. She will testify that she believes that she was the first in the T-SCIF to see the "Apache video" which she found of her own accord in a network folder. She will testify that she called CW2 Ehresman, SSG Balonck, and another soldier over to see the video. SPC Showman will testify that over the next few days, several of the T-SCIF personnel debated about whether the video showed a camera or a rocket propelled Grenade (RPG) launcher and whether the actions of the Apache crew were appropriate under the circumstances. SPC Showman will testify about her time as PFC Manning direct supervisor and her multiple observations of PFC Manning both before and during the

deployment that indicated to her PFC Manning was struggling both emotionally and mentally.

- 35) Adrian Lamo, 3506 Lynnmarway, Carmichael, CA 95608, (202) 370-7750, adrian@adrian.org. Mr. Lamo will testify about the chat conversations that he had with an individual alleged to have been PFC Manning between 21 May 2010 and 25 May 2010. He will also testify about the nature of the conversations and his subsequent actions.
- 36) President Barack Obama, The White House, 1600 Pennsylvania Avenue NW, Washington, D.C. 20500, (202) 456-1414. The defense requests the presence of President Obama in order to discuss the issue of Unlawful Command Influence (UCI). Under Rule for Courts-Martial 405(c), the defense is entitled to explore the issue of UCI. Under the Uniform Code of Military Justice (UCMJ), a superior officer in the chain of command is prohibited from saying or doing anything that could influence any decision by a subordinate in how to handle a military justice matter. As the Commander in Chief, President Obama made improper comments on 21 April 2011, when he decided to comment on PFC Manning and his case. On that date, he responded to questions regarding PFC Manning's alleged actions by concluding that "We're a nation of laws. We don't let individuals make their own decisions about how the laws operate. He [PFC Manning] broke the law." The comments by President Obama are UCI. The defense intends to question President Obama on the nature of his discussions with members of the military regarding this case and whether he has made any other statements that would either influence the prosecution of this case or PFC Manning's right to obtain a fair trial. In addition to the UCI issue, President Obama will testify about his views on the Afghanistan SIGACTs released by WikiLeaks. He will testify that the leak did not reveal any issues that had not already informed our public debate on Afghanistan. He will also testify that the Afghanistan SIGACTs point to the same challenges that led him to conduct an extensive review of the Afghanistan policy. President Obama will also testify about the problem of over-classification within the government. Specifically, that he supported and signed into law the Reducing Over-Classification Act on 7 October 2010. Additionally, he will testify that on his first full day in office, 21 January 2009, he issued two memoranda for the head of Executive Departments and Agencies that were related to transparency in government. The first memorandum focused on the administration of the Freedom of Information Act (FOIA), and the second focused on transparency and open government. President Obama will testify that the transparency memorandum he wrote committed the administration to "an unprecedented level of openness" and to the establishment of "a system of transparency, public participation, and collaboration." President Obama will testify that on 8 December 2009 his administration released a third memorandum -- an Open Government Directive (OGD). The OGD included detailed instructions for departments and agencies on how they are to "implement the principles of transparency, participation, and collaboration." Finally, on 29 December 2009, President Obama will testify that he issued Executive Order 13526 in an attempt to

improve the system for classifying, safeguarding, and declassifying national security information, including the establishment of the National Declassification Center.

- 37) Former Secretary Robert Gates, Chancellor, College of William and Mary, P.O. Box 8795, Williamsburg, VA 23187, (757) 221-1693. Former Secretary Gates will testify that the Afghanistan and Iraq SIGACT releases did not reveal any sensitive intelligence sources or methods. He will also testify that the Department of Defense could not point to anyone in Afghanistan or Iraq harmed due to the documents released by Wikileaks. He will testify that the Afghanistan and Iraq SIGACTs are simply ground-level field reports that document dated activities which do not disclose sensitive information or our sources and methods. Former Secretary Gates will also testify that the initial public descriptions of the harm to foreign policy due to the publication of diplomatic cables were "fairly significantly overwrought." He will also testify that although the disclosures were embarrassing and awkward, they did not represent significant consequences to foreign policy. Finally, Former Secretary Gates will testify that on 29 July 2010, he directed the Defense Intelligence Agency (DIA) to lead a comprehensive review of the documents allegedly given to WikiLeaks and to coordinate under the Information Review Task Force (IRTF, formerly TF 725) to conduct a complete damage review. He will testify that the damage review confirmed that the alleged leaks represented a low to at best moderate risk to national security. Specifically, that all of the information allegedly leaked was either dated, represented low-level opinions, or was already commonly understood and known due to previous public disclosures.
- 38) Secretary Hillary R. Clinton, U.S. Department of State, 2201 C Street NW, Washington, D.C. 20520, (202) 647-4000. Secretary Clinton will testify that she has raised the issue of the disclosure of diplomatic cables with foreign leaders "in order to assure our colleagues that it will not in any way interfere with American diplomacy or our commitment to continuing important work that is ongoing." Secretary Clinton will also testify that she has not had any concerns expressed to her about whether any nation would not continue to work with the United States or would not continue to discuss important matters going forward due to the alleged leaks. As such, Secretary Clinton will testify that although the leaks were embarrassing for the administration, that she concurs with Former Secretary Gates' opinion that they did not represent significant consequences to foreign policy.
- 39) CPT James Koky, 1st Cavalry Division, Fort Hood, Texas, Brigade S-2, (254) 285-5093, james.koky@conus.army.mil. He will testify about his classification review of the three Apache gun videos that were sent to his Division by FORSCOM. Specifically, he will testify that the videos were not classified at the time of their alleged release. However, he will testify that he believes that videos should have been classified. He will testify regarding his classification determination.

- 40) RADM Kevin M. Donegan, Director of Operations for United States Central Command, 7115 South Boundary Boulevard, MacDill Air Force Base, Florida 33621, (312) 651-4134, kevin.donegan@centcom.mil. RADM Donegan conducted classification reviews on two PowerPoint slide presentations of official reports originated by USCENTCOM. The PowerPoint presentations are the subject of Specification 10 of Charge II. RADM Donegan will testify regarding his classification determination and his belief of the impact on national security due to the release of the information.
- 41) Robert E. Betz, USCYBERCOM Chief Classification Advisory Officer, the government has not provided the defense with contact information for Mr. Betz. Mr. Betz will testify about his classification determination concerning the alleged chat logs between Mr. Iamo and PFC Bradley Manning. Specifically, he will testify about his classification assessment of information discussed in the alleged chat logs. Mr. Betz believes the limited discussion caused "serious damage" to national security.
- 42) LtGen Robert F. Schmidle, Jr., Deputy Commander U.S. Cyber Command, (703) 614-3663, robert.schmidle@usmc.mil. LtGen Schmidle, as the Original Classification Authority (OCA) over the information discussed by Mr. Betz. LtGen Schmidle will testify that he concurs with the classification determination and impact statements made by Mr. Betz. The defense would like to question him regarding his declaration and the basis for his belief.
- 43) VADM Robert S. Harward, USCENTCOM, Deputy Commander, MacDill Air Force Base, Florida 33621, (813) 840-5104, robert.harward@jcfcom.mil. VADM Harward will testify concerning his classification review and classification determination concerning the CIDNE Afghanistan Events, CIDNE Iraq Events, other briefings and the BE22 PAX.wmv video. Specifically, VADM Harward will testify concerning his classification determination and his belief of the impact on national security from having this information released to the public.
- 44) Patrick F. Kennedy, Under Secretary of State for Management, the defense does not have contact information for Mr. Kennedy. Mr. Kennedy will testify concerning his review of the disclosure of Department of State Diplomatic Cables stored within the Net-Centric Diplomacy server and part of SIPDIS. Mr. Kennedy will testify concerning his classification determination and the impact of the release of the information on national security.
- 45) RADM David B. Woods, Commander, Joint Task Force – Guantanamo (JTF-GTMO), (703) 697-3650, david.b.woods@navy.mil. RADM Woods will testify concerning his review of the disclosure of five documents, totaling twenty-two pages. RADM Woods will testify concerning his classification determination and the impact of the release of the information on national security.

- 46) CAPT Kevin D. Moore, Walter Reed National Military Medical Center, (301) 295-0500, kevin.d.moore@med.navy.mil. He will testify that during a meeting in early January of 2011, the Security Battalion Commander in charge of the Quantico Brig, Col. Robert Oltman, clearly stated to the Brig Staff that "I will not have anything happen to Manning on my watch.... So, nothing is going to change.... He won't be able to hurt himself and he won't be able to get away, and our way of making sure of that is that he will remain on Maximum Custody and POI indefinitely." He will testify that one of the other Brig psychiatrists, Capt. William Hocter then said "You know Sir, I am concerned because if you are going to do that, maybe you want to call it something else because it is not based upon anything from behavioral health." In response, Capt. Moore will testify that Col. Oltman said "We will do whatever we want to do. You make a recommendation and then I have to make a decision based upon everything else." Capt. Moore will testify that Capt. Hocter then said, "Well then don't say it is based upon mental health. You can say it is Maximum Custody, and just don't put that we [behavioral health] are somehow involved in this." Col. Oltman replied, "Well, that is what we are going to do." Capt. Moore will testify that he spoke with others at the Brig to see if they knew why the Brig was so heavily handed on PFC Manning. He will testify that others at the Brig told him that they have never seen anything like this before. Capt. Moore will testify that others told him that they were afraid to speak out about the situation given the concern of what would happen as a result of any complaint about PFC Manning's treatment.
- 47) CAPT William J. Hocter, Walter Reed National Military Medical Center, (703) 784-1779, william.hocter@med.navy.mil. He will testify that neither the Quantico Brig Commander, CW4 James Averhart, nor the Security Battalion Commander, Col. Robert Oltman, gave him any reasons for maintaining the Prevention of Injury precautions other than stating it was for PFC Manning's safety. He will testify that Col. Oltman intimated that he was receiving instruction from a higher authority on the matter but did not say who was providing this direction. Capt. Hocter will testify that he knew that the higher base authorities had frequent (sometimes weekly) meetings to discuss PFC Manning. Capt. Hocter will testify that he gave weekly status reports stating that he felt the POI precautions were unnecessary. Capt. Hocter will testify that he recalls a meeting with Col. Oltman where he stated that PFC Manning would remain in his current status Maximum Custody and POI unless and until he received instructions from higher authority to the contrary. Capt. Hocter cannot recall Col. Oltman's exact words, but he does recall that Col. Oltman made it clear that nothing would change with PFC Manning regardless of his behavior or the recommendations of behavioral health.
- 48) Inmate Christopher Whitfield, Joint Regional Correction Facility (JRCF), Fort Leavenworth, Kansas. Inmate Whitfield will testify that he was taken to the pretrial section at the JRCF and met with PFC Manning. He will testify that he explained the purpose of his visit and asked PFC Manning who he was and why he was at the JRCF. PFC Manning allegedly responded with, "I sold information to Wikileaks."

Shortly after this alleged statement, the guards realized that Inmate Whitfield should not have been in the pretrial area.

A handwritten signature in black ink, appearing to read 'D. Coombs', with a stylized flourish at the end.

DAVID E. COOMBS
Civilian Defense Counsel

Attachment D



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
U.S. ARMY MILITARY DISTRICT OF WASHINGTON
210 A STREET
FORT LESLEY J. MCNAIR, DC 20319-5013

ANJA-CL

2 December 2011

MEMORANDUM FOR LTC Paul Almanza, 150th Judge Advocate General Detachment, Legal Support Organization, MG Albert C. Lieber USAR Center, 6901 Telegraph Road, Alexandria, VA 22310

SUBJECT: Requested Witness List for Article 32 Investigation - United States v. PFC Bradley Manning

1. The United States requests the following witnesses be called during the Article 32 proceeding in the above-referenced case:

- a. SFC Paul D. Adkins, HHC, 10th Mountain Division, Fort Drum, NY, 315-772-8620
- b. SPC Eric S. Baker, 62d MP Detachment, Fort Drum, NY, 910-354-4552
- c. WO1 Kyle J. Balonek, HHB, 10th Mountain Division, Fort Drum, NY, 315-775-7203
- d. Special Agent Troy Bettencourt, Department of Treasury, Washington, DC, 941-447-1030
- e. SSG Peter J. Bigelow, AFSOUTH BN Naples, Naples, Italy, 39-348-094-0656
- f. CPT Thomas M. Cherepko, NATO Force Command Madrid, Madrid, Spain, 412-387-3090
- g. Special Agent Antonio Edwards, Computer Crimes Investigative Unit, USACIDC, Quantico, VA, 703-706-2438 / 571-305-4464
- h. CPT Casey M. Fulton, 2d BDE, 10th Mountain Division, Fort Drum, NY, 404-769-8984
- i. Special Agent Toni Graham, 102nd MP Det (CID), Schofield Barracks, HI, 808-655-1776
- j. Mr. Mark Johnson, Computer Crimes Investigative Unit, USACIDC, Quantico, VA, 571-305-4487
- k. Mr. Adrian Lamo, Carmichael, CA, adrian@adrian.org
- l. CPT Steven J. Lim, HQ, 1st Army Division-East, Fort Meade, MD, 240-429-7798

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SUBJECT: Requested Witness List for Article 32 Investigation – United States v. PFC Bradley Manning

m. **SGT Chad M. Madaras**, B Co, 2d BDE STB, 10th Mountain Division, Fort Drum, NY, 315-404-6275

n. **SFC(R) Brian H. Madrid**, Buckeye, AZ, 520-258-8934

o. **Special Agent Mark Mander**, Computer Crimes Investigative Unit, USACIDC, Quantico, VA, 571-305-4463 / 240-373-4795

p. **Mr. Jason A. Milliman**, Palmyra, VA, 520-249-0606


q. **Special Agent Calder Robertson**, Computer Crimes Investigative Unit, Germany, DSN 314-380-5355

r. **Special Agent David Shaver**, Computer Crimes Investigative Unit, USACIDC, Quantico, VA, 571-305-4481

s. **Ms. Jihreah W. Showman**, Syracuse, NY, 918-935-4185

t. **Special Agent Alfred Williamson**, Computer Crimes Investigative Unit, USACIDC, Quantico, VA, 571-305-4488

2. If necessary, the prosecution may request additional witnesses whose testimony is relevant, and not cumulative, to the investigation.



ASHDEN PEIN
CPT, JA
Trial Counsel

Attachment E

REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
U.S. ARMY MILITARY DISTRICT OF WASHINGTON
210 A STREET
FORT LESLEY J. MCNAIR, DC 20319-5013

ANJA-CL

7 December 2011

MEMORANDUM FOR LTC Paul Almanza, 150th Judge Advocate General Detachment, Legal Support Organization, MG Albert C. Lieber, USAR Center, 6901 Telegraph Road, Alexandria, VA 22310

SUBJECT: Response to Defense Request for Article 32 Witnesses – United States v. PFC Bradley Manning

1. **PURPOSE.** The prosecution responds to the Defense Request for Article 32 Witnesses as follows and, where applicable, requests you find the witnesses not reasonably available or the defense's proffered testimony cumulative or not relevant to the Article 32 investigation.

2. **LAW.** "[A]ny witness whose testimony would be relevant to the investigation and not cumulative, shall be produced if reasonably available." Manual for Courts-Martial, Rule for Courts-Martial (RCM) 405(g)(1); *see also* RCM 405(a) discussion (the primary objective of the investigation is "to inquire into the truth of the matters set forth in the charges, [to verify] the form of the charges, and to secure information on which to determine what disposition should be made of the case").

3. **RESPONSES.**

- a. SA Toni Graham. The United States does not object to this witness.
- b. SA Mark Mander. The United States does not object to this witness.
- c. SA Calder Robertson. The United States does not object to this witness.
- d. SA David Shaver. The United States does not object to this witness.

e. SA Charles Ames. The United States objects to the defense request for this witness. The defense's proffered testimony is cumulative with other law enforcement witnesses, namely SA Toni Graham, SA Mark Mander, SA Calder Robertson, SA David Shaver, SA Alfred Williamson, and SA Troy Bettencourt.

- f. SA Alfred Williamson. The United States does not object to this witness.
- g. SA Troy Bettencourt. The United States does not object to this witness.

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SUBJECT: Response to Defense Request for Article 32 Witnesses – United States v. PFC Bradley Manning

h. SA Ronald Rock. The United States objects to the defense request for this witness. The defense's proffered testimony is cumulative with other law enforcement witnesses, namely SA Toni Graham, SA Mark Mander, SA Calder Robertson, SA David Shaver, SA Alfred Williamson, and SA Troy Bettencourt. This case is a joint investigation and the above CID agents can testify about this matter.

i. SA Patrick Wheeler. The United States objects to the defense request for this witness. The defense's proffered testimony is cumulative with other law enforcement witnesses, namely SA Toni Graham, SA Mark Mander, SA Calder Robertson, SA David Shaver, SA Alfred Williamson, and SA Troy Bettencourt. This case is a joint investigation and the above CID agents can testify about this matter.

j. CPT Martin Leibman. The United States objects to the defense request for this witness. The defense's proffered testimony regarding PFC Manning's mental status and MEDCOM Form 4038 is not relevant to the Article 32 investigation and will only serve to distract from the relevant issues. In addition, on 22 April 2011, an RCM 706 board concluded that "PFC Manning did not have a severe mental disease or defect at the time of the alleged criminal conduct that resulted in him being unable to appreciate the nature and quality or wrongfulness of his conduct." See RCM 405(a) discussion (the primary objective of the investigation is "to inquire into the truth of the matters set forth in the charges, [to verify] the form of the charges, and to secure information on which to determine what disposition should be made of the case"). The alleged testimony of CPT Leibman is outside the scope of the Article 32 investigation. Even if found relevant, the proffered testimony is cumulative with testimony from witnesses who worked with PFC Manning, namely CPT Lim, CPT Fulton, WO1 Balonek, SFC Adkins, SGT Madaras, and Ms. Showman.

k. CPT Michael Worsley. The United States objects to the defense request for this witness. The defense's proffered testimony regarding PFC Manning's mental status and his alleged communications with SFC Adkins, MAJ Clausen, and MSG Usbeck is not relevant to the Article 32 investigation and will only serve to distract from the relevant issues. In addition, on 22 April 2011, an RCM 706 board concluded that "PFC Manning did not have a severe mental disease or defect at the time of the alleged criminal conduct that resulted in him being unable to appreciate the nature and quality or wrongfulness of his conduct." See RCM 405(a) discussion (the primary objective of the investigation is "to inquire into the truth of the matters set forth in the charges, [to verify] the form of the charges, and to secure information on which to determine what disposition should be made of the case"). The alleged testimony of CPT Worsley is outside the scope of the Article 32 investigation. Even if found relevant, the proffered testimony is cumulative with testimony from witnesses who worked with PFC Manning, namely CPT Lim, CPT Fulton, WO1 Balonek, SFC Adkins, SGT Madaras, and Ms. Showman.

l. CPT Edan Critchfield. The United States objects to the defense request for this witness. The defense's proffered testimony regarding PFC Manning's mental status, his alleged recommendation, his alleged training on Soldier suitability for access to classified information,

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SUBJECT: Response to Defense Request for Article 32 Witnesses – United States v. PFC Bradley Manning

and the alleged MEDCOM Form 4038 is not relevant to the Article 32 investigation and will only serve to distract from the relevant issues. In addition, on 22 April 2011, an RCM 706 board concluded that “PFC Manning did not have a severe mental disease or defect at the time of the alleged criminal conduct that resulted in him being unable to appreciate the nature and quality or wrongfulness of his conduct.” See RCM 405(a) discussion (the primary objective of the investigation is “to inquire into the truth of the matters set forth in the charges, [to verify] the form of the charges, and to secure information on which to determine what disposition should be made of the case”). The alleged testimony of CPT Critchfield is outside the scope of the Article 32 investigation. Even if found relevant, the proffered testimony is cumulative with testimony from witnesses who worked with PFC Manning, namely CPT Lim, CPT Fulton, WO1 Balonek, SFC Adkins, SGT Madaras, and Ms. Showman.

m. COL David Miller. The United States objects to the defense request for this witness. The defense’s proffered testimony regarding the command’s decision to deploy PFC Manning and his opinion of MAJ Clausen, MAJ Dreher, and MSG Adkins is not relevant to the Article 32 investigation and will only serve to distract from the relevant issues. See RCM 405(a) discussion (the primary objective of the investigation is “to inquire into the truth of the matters set forth in the charges, [to verify] the form of the charges, and to secure information on which to determine what disposition should be made of the case”). The alleged testimony of COL Miller is outside the scope of the Article 32 investigation. Even if found relevant, the proffered testimony is cumulative with other witnesses in the chain of command, namely CPT Lim, CPT Fulton, WO1 Balonek, SFC Adkins, and Ms. Showman.

n. LTC Brian Kerns. The United States objects to the defense request for this witness. The defense’s proffered testimony regarding his opinion of MAJ Clausen and MSG Adkins and the alleged operations of the working group is not relevant to the Article 32 investigation and will only serve to distract from the relevant issues. See RCM 405(a) discussion (the primary objective of the investigation is “to inquire into the truth of the matters set forth in the charges, [to verify] the form of the charges, and to secure information on which to determine what disposition should be made of the case”). The alleged testimony of LTC Kerns is outside the scope of the Article 32 investigation. Even if found relevant, the proffered testimony is cumulative with other witnesses in the chain of command, namely CPT Lim, CPT Fulton, WO1 Balonek, SFC Adkins, and Ms. Showman.

o. MAJ Elijah Dreher. The United States objects to the defense request for this witness. The defense’s proffered testimony regarding his alleged ignorance of issues relating to PFC Manning is not relevant to the Article 32 investigation and will only serve to distract from the relevant issues. See RCM 405(a) discussion (the primary objective of the investigation is “to inquire into the truth of the matters set forth in the charges, [to verify] the form of the charges, and to secure information on which to determine what disposition should be made of the case”). The alleged testimony of MAJ Dreher is outside the scope of the Article 32 investigation. Even if found relevant, the proffered testimony is cumulative with other witnesses in the chain of command, namely CPT Lim, CPT Fulton, WO1 Balonek, SFC Adkins, and Ms. Showman.

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SUBJECT: Response to Defense Request for Article 32 Witnesses – United States v. PFC Bradley Manning

p. MAJ Clifford Clausen. The United States objects to the defense request for this witness. The defense's proffered testimony regarding his alleged ignorance of information relating to PFC Manning is not relevant to the Article 32 investigation and will only serve to distract from the relevant issues. See RCM 405(a) discussion (the primary objective of the investigation is "to inquire into the truth of the matters set forth in the charges, [to verify] the form of the charges, and to secure information on which to determine what disposition should be made of the case"). The alleged testimony of MAJ Clausen is outside the scope of the Article 32 investigation. Even if found relevant, the proffered testimony relating to operations in the S-2 office is cumulative with other witnesses who worked in the S-2 office, namely CPT Lim, CPT Fulton, WO1 Balonek, SFC Adkins, SGT Madaras, and Ms. Showman.

q. CPT Barclay Keay. The United States objects to the defense request for this witness. The defense's proffered testimony regarding his alleged opinion that media devices should not be allowed in the S-2 office is not relevant to the Article 32 investigation and will only serve to distract from the relevant issues. See RCM 405(a) discussion (the primary objective of the investigation is "to inquire into the truth of the matters set forth in the charges, [to verify] the form of the charges, and to secure information on which to determine what disposition should be made of the case"). The alleged testimony of CPT Keay is outside the scope of the Article 32 investigation. Even if found relevant, the proffered testimony relating to PFC Manning's work performance and operations in the S-2 office is cumulative with other witnesses who worked in the S-2 office, namely CPT Lim, CPT Fulton, WO1 Balonek, SFC Adkins, SGT Madaras, and Ms. Showman.

r. CPT Matthew Freeburg. The United States objects to the defense request for this witness. The defense's proffered testimony regarding PFC Manning's alleged behavioral issues and any actions taken by the chain of command in response is not relevant to the Article 32 investigation and will only serve to distract from the relevant issues. See RCM 405(a) discussion (the primary objective of the investigation is "to inquire into the truth of the matters set forth in the charges, [to verify] the form of the charges, and to secure information on which to determine what disposition should be made of the case"). The alleged testimony of CPT Freeburg is outside the scope of the Article 32 investigation. Even if found relevant, the proffered testimony is cumulative with other unit witnesses, namely CPT Lim, CPT Fulton, WO1 Balonek, SFC Adkins, SGT Madaras, and Ms. Showman.

s. CPT Steven Lim. The United States does not object to this witness.

t. CPT Thomas Cherepko. The United States does not object to this witness.

u. CPT Michael Johnson. The United States objects to the defense request for this witness. The defense's proffered testimony regarding PFC Manning's mental status and his opinion and interactions with SFC Adkins, CPT Lim, and MAJ Clausen is not relevant to the Article 32 investigation and will only serve to distract from the relevant issues. In addition, on 22 April 2011, an RCM 706 board concluded that "PFC Manning did not have a severe mental disease or

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SUBJECT: Response to Defense Request for Article 32 Witnesses – United States v. PFC Bradley Manning

defect at the time of the alleged criminal conduct that resulted in him being unable to appreciate the nature and quality or wrongfulness of his conduct.” See RCM 405(a) discussion (the primary objective of the investigation is “to inquire into the truth of the matters set forth in the charges, [to verify] the form of the charges, and to secure information on which to determine what disposition should be made of the case”). The alleged testimony of CPT Johnson is outside the scope of the Article 32 investigation. Even if found relevant, the proffered testimony is cumulative with other expected witnesses, namely CPT Lim, CPT Fulton, WO1 Balonek, SFC Adkins, SGT Madaras, and Ms. Showman.

v. 1LT Tanya Gaab. The United States objects to the defense request for this witness. The defense’s proffered testimony regarding her alleged opinion(s) of PFC Manning and of the leadership, the command decision to deploy PFC Manning, and PFC Manning’s mental status is not relevant to the Article 32 investigation and will only serve to distract from the relevant issues. In addition, on 22 April 2011, an RCM 706 board concluded that “PFC Manning did not have a severe mental disease or defect at the time of the alleged criminal conduct that resulted in him being unable to appreciate the nature and quality or wrongfulness of his conduct.” See RCM 405(a) discussion (the primary objective of the investigation is “to inquire into the truth of the matters set forth in the charges, [to verify] the form of the charges, and to secure information on which to determine what disposition should be made of the case”). The alleged testimony of 1LT Gaab is outside the scope of the Article 32 investigation. Even if found relevant, the proffered testimony is cumulative with other expected witnesses, namely CPT Lim, CPT Fulton, WO1 Balonek, SFC Adkins, SGT Madaras, and Ms. Showman.

w. 1LT Elizabeth Fields. The United States objects to the defense request for this witness. The defense’s proffered testimony regarding her alleged training as the SSR and her opinion of the leadership is not relevant to the Article 32 investigation and will only serve to distract from the relevant issues. See RCM 405(a) discussion (the primary objective of the investigation is “to inquire into the truth of the matters set forth in the charges, [to verify] the form of the charges, and to secure information on which to determine what disposition should be made of the case”). The alleged testimony of 1LT Fields is outside the scope of the Article 32 investigation. Even if found relevant, the proffered testimony relating to conduct in the S-2 office is cumulative with other witnesses who worked in the S-2 office, namely CPT Lim, CPT Fulton, WO1 Balonek, SFC Adkins, SGT Madaras, and Ms. Showman.

x. CW2 Joshua Ehresman. The United States objects to the defense request for this witness. The defense’s proffered testimony regarding PFC Manning’s alleged mental status and the decision to deploy PFC Manning is not relevant to the Article 32 investigation and will only serve to distract from the relevant issues. In addition, on 22 April 2011, an RCM 706 board concluded that “PFC Manning did not have a severe mental disease or defect at the time of the alleged criminal conduct that resulted in him being unable to appreciate the nature and quality or wrongfulness of his conduct.” See RCM 405(a) discussion (the primary objective of the investigation is “to inquire into the truth of the matters set forth in the charges, [to verify] the form of the charges, and to secure information on which to determine what disposition should be

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SUBJECT: Response to Defense Request for Article 32 Witnesses – United States v. PFC Bradley Manning

made of the case"). The alleged testimony of CW2 Ehresman is outside the scope of the Article 32 investigation. Even if found relevant, the proffered testimony relating to conduct in the S-2 office is cumulative with other witnesses who worked in the S-2 office, namely CPT Lim, CPT Fulton, WO1 Balonek, SFC Adkins, SGT Madaras, and Ms. Showman.

y. MSG Eric Usbeck. The United States objects to the defense request for this witness. The defense's proffered testimony regarding PFC Manning's alleged mental status and attitude is not relevant to the Article 32 investigation and will only serve to distract from the relevant issues. In addition, on 22 April 2011, an RCM 706 board concluded that "PFC Manning did not have a severe mental disease or defect at the time of the alleged criminal conduct that resulted in him being unable to appreciate the nature and quality or wrongfulness of his conduct." See RCM 405(a) discussion (the primary objective of the investigation is "to inquire into the truth of the matters set forth in the charges, [to verify] the form of the charges, and to secure information on which to determine what disposition should be made of the case"). The alleged testimony of MSG Usbeck is outside the scope of the Article 32 investigation. Even if found relevant, the proffered testimony relating to PFC Manning's alleged conduct is cumulative with other witnesses in the chain of command, namely CPT Lim, CPT Fulton, WO1 Balonek, SFC Adkins, and Ms. Showman.

z. MSG Mark Woodworth. The United States objects to the defense request for this witness. The defense's proffered testimony regarding PFC Manning's mental status is not relevant to the Article 32 investigation and will only serve to distract from the relevant issues. In addition, on 22 April 2011, an RCM 706 board concluded that "PFC Manning did not have a severe mental disease or defect at the time of the alleged criminal conduct that resulted in him being unable to appreciate the nature and quality or wrongfulness of his conduct." See RCM 405(a) discussion (the primary objective of the investigation is "to inquire into the truth of the matters set forth in the charges, [to verify] the form of the charges, and to secure information on which to determine what disposition should be made of the case"). The alleged testimony of MSG Woodworth is outside the scope of the Article 32 investigation. Even if found relevant, the proffered testimony is cumulative with other witnesses in the chain of command, namely CPT Lim, CPT Fulton, WO1 Balonek, SFC Adkins, and Ms. Showman, and law enforcement witnesses, namely SA Toni Graham, SA Mark Mander, SA Calder Robertson, SA David Shaver, SA Alfred Williamson, and SA Troy Bettencourt.

aa. SFC Paul Adkins. The United States does not object to this witness.

bb. SSG Lawrence Mitchell. The United States objects to the defense request for this witness. The defense's proffered testimony regarding any alleged photos observed on PFC Manning's iPod, his mental status, and any attempt to chapter PFC Manning out of the military is not relevant to the Article 32 investigation and will only serve to distract from the relevant issues. In addition, on 22 April 2011, an RCM 706 board concluded that "PFC Manning did not have a severe mental disease or defect at the time of the alleged criminal conduct that resulted in him being unable to appreciate the nature and quality or wrongfulness of his conduct." See RCM

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405(a) discussion (the primary objective of the investigation is “to inquire into the truth of the matters set forth in the charges, [to verify] the form of the charges, and to secure information on which to determine what disposition should be made of the case”). The alleged testimony of SSG Mitchell is outside the scope of the Article 32 investigation. Even if found relevant, the proffered testimony relating to PFC Manning’s alleged conduct is cumulative with witnesses who worked in the S-2 office, namely CPT Lim, CPT Fulton, WO1 Balonek, SFC Adkins, SGT Madaras, and Ms. Showman.

cc. SGT Rebecca Schwab. The United States objects to the defense request for this witness. The defense’s proffered testimony regarding PFC Manning alleged sexual orientation and her opinion of PFC Manning is not relevant to the Article 32 investigation and will only serve to distract from the relevant issues. *See* RCM 405(a) discussion (the primary objective of the investigation is “to inquire into the truth of the matters set forth in the charges, [to verify] the form of the charges, and to secure information on which to determine what disposition should be made of the case”). The alleged testimony of SGT Schwab is outside the scope of the Article 32 investigation. Even if found relevant, the proffered testimony is cumulative with other witnesses who worked with the accused, namely CPT Lim, CPT Fulton, WO1 Balonek, SFC Adkins, SGT Madaras, and Ms. Showman.

dd. SGT Daniel Padgett. The United States objects to the defense request for this witness. The defense’s proffered testimony regarding his opinion of the chain of command is not relevant to the Article 32 investigation and will only serve to distract from the relevant issues. *See* RCM 405(a) discussion (the primary objective of the investigation is “to inquire into the truth of the matters set forth in the charges, [to verify] the form of the charges, and to secure information on which to determine what disposition should be made of the case”). The alleged testimony of SGT Padgett is outside the scope of the Article 32 investigation. Even if found relevant, the proffered testimony relating to PFC Manning’s conduct and operations in the S-2 office is cumulative with other witnesses who worked in the S-2 office, namely CPT Lim, CPT Fulton, WO1 Balonek, SFC Adkins, SGT Madaras, and Ms. Showman.

ee. SGT David Sadtler. The United States objects to the defense request for this witness. The defense’s proffered testimony regarding an incident that upset PFC Manning and his opinion of PFC Manning and the chain of command is not relevant to the Article 32 investigation and will only serve to distract from the relevant issues. *See* RCM 405(a) discussion (the primary objective of the investigation is “to inquire into the truth of the matters set forth in the charges, [to verify] the form of the charges, and to secure information on which to determine what disposition should be made of the case”). The alleged testimony of SGT Sadtler is outside the scope of the Article 32 investigation. Even if found relevant, the proffered testimony is cumulative with other witnesses who worked in the S-2 shop, namely CPT Lim, CPT Fulton, WO1 Balonek, SFC Adkins, SGT Madaras, and Ms. Showman.

ff. SGT Lorena Cooley. The United States objects to the defense request for this witness. The defense’s proffered testimony regarding PFC Manning’s treatment by the unit and her

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opinion of the chain of command is not relevant to the Article 32 investigation and will only serve to distract from the relevant issues. *See* RCM 405(a) discussion (the primary objective of the investigation is “to inquire into the truth of the matters set forth in the charges, [to verify] the form of the charges, and to secure information on which to determine what disposition should be made of the case”). The alleged testimony of SGT Cooley is outside the scope of the Article 32 investigation. Even if found relevant, the proffered testimony is cumulative with other witnesses who worked in the S-2 office, namely CPT Lim, CPT Fulton, WO1 Balonek, SFC Adkins, SGT Madaras, and Ms. Showman.

gg. SGT Sheri Walsh. The United States objects to the defense request for this witness. The defense’s proffered testimony regarding PFC Manning’s treatment by the unit and PFC Manning alleged mental issues is not relevant to the Article 32 investigation and will only serve to distract from the relevant issues. In addition, on 22 April 2011, an RCM 706 board concluded that “PFC Manning did not have a severe mental disease or defect at the time of the alleged criminal conduct that resulted in him being unable to appreciate the nature and quality or wrongfulness of his conduct.” *See* RCM 405(a) discussion (the primary objective of the investigation is “to inquire into the truth of the matters set forth in the charges, [to verify] the form of the charges, and to secure information on which to determine what disposition should be made of the case”). The alleged testimony of SGT Walsh is outside the scope of the Article 32 investigation. Even if found relevant, the proffered testimony is cumulative with other witnesses who worked in the S-2 office, namely CPT Lim, CPT Fulton, WO1 Balonek, SFC Adkins, SGT Madaras, and Ms. Showman.

hh. Ms. Jihreah Showman. The United States does not object to this witness.

ii. Mr. Adrian Lamo. The United States does not object to this witness.

jj. President Barack Obama. The United States objects to the defense’s request for this witness. The defense’s proffered testimony is not relevant to the Article 32 investigation because it involves matters outside the scope of the investigation and will only serve to distract from the relevant issues. *See* RCM 405(a) discussion (the primary objective of the investigation is “to inquire into the truth of the matters set forth in the charges, [to verify] the form of the charges, and to secure information on which to determine what disposition should be made of the case”).

kk. Dr. Robert Gates. The United States objects to the defense’s request for this witness. The defense’s proffered testimony is not relevant to the Article 32 investigation because it involves matters outside the scope of the investigation and will only serve to distract from the relevant issues. *See* RCM 405(a) discussion (the primary objective of the investigation is “to inquire into the truth of the matters set forth in the charges, [to verify] the form of the charges, and to secure information on which to determine what disposition should be made of the case”).

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ll. Honorable Hillary Clinton. The United States objects to the defense's request for this witness. The defense's proffered testimony is not relevant to the Article 32 investigation because it involves matters outside the scope of the investigation and will only serve to distract from the relevant issues. See RCM 405(a) discussion (the primary objective of the investigation is "to inquire into the truth of the matters set forth in the charges, [to verify] the form of the charges, and to secure information on which to determine what disposition should be made of the case").

mm. CPT James Kolky. The United States objects to the defense request for this witness. The defense's proffered testimony is not relevant to the Article 32 investigation and will only serve to distract from the relevant issues. The Apache video is not classified, and the United States does not allege otherwise.

nn. RADM Kevin Donegan. The United States objects to the defense request for this witness. The United States requests you find RADM Donegan not reasonably available for the Article 32 given his position as Director of Operations, CENTCOM. See RCM 405(g)(1)(B) (a witness is not reasonably available if the "difficulty, expense, delay, and effect on military operations" of obtaining the testimony outweighs its significance).

oo. Mr. Robert Betz. The United States objects to the defense request for this witness. The United States requests you find Mr. Betz not reasonably available for the Article 32 given his position as Chief Classification Advisory Officer, CYBERCOM. See RCM 405(g)(1)(B) (a witness is not reasonably available if the "difficulty, expense, delay, and effect on military operations" of obtaining the testimony outweighs its significance).

pp. LtGen Robert Schmidle. The United States objects to the defense request for this witness. The United States requests you find LtGen Schmidle not reasonably available for the Article 32 given his position as Deputy Commander, CYBERCOM. See RCM 405(g)(1)(B) (a witness is not reasonably available if the "difficulty, expense, delay, and effect on military operations" of obtaining the testimony outweighs its significance).

qq. VADM Robert Harward. The United States objects to the defense request for this witness. The United States requests you find VADM Harward not reasonably available for the Article 32 given his position as Deputy Commander, CENTCOM. See RCM 405(g)(1)(B) (a witness is not reasonably available if the "difficulty, expense, delay, and effect on military operations" of obtaining the testimony outweighs its significance).

rr. Honorable Patrick Kennedy. The United States objects to the defense request for this witness. The United States requests you find Honorable Kennedy not reasonably available for the Article 32 given his position as Under Secretary of State for Management. See RCM 405(g)(1)(B) (a witness is not reasonably available if the "difficulty, expense, delay, and effect on military operations" of obtaining the testimony outweighs its significance).

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SUBJECT: Response to Defense Request for Article 32 Witnesses – United States v. PFC Bradley Manning

ss. RADM David Woods. The United States objects to the defense request for this witness, according to testimony anticipated by defense. The United States requests you find RADM Woods not reasonably available for the Article 32 given his position as Commander, Joint Task Force – Guantanamo. *See* RCM 405(g)(1)(B) (a witness is not reasonably available if the “difficulty, expense, delay, and effect on military operations” of obtaining the testimony outweighs its significance).

tt. CAPT Kevin Moore. The United States objects to the defense request for this witness. The defense’s proffered testimony regarding PFC Manning’s alleged POI status is not relevant to the Article 32 investigation and will only serve to distract from the relevant issues. *See* RCM 405(a) discussion (the primary objective of the investigation is “to inquire into the truth of the matters set forth in the charges, [to verify] the form of the charges, and to secure information on which to determine what disposition should be made of the case”). The alleged testimony of CAPT Moore is outside the scope of the Article 32 investigation.

uu. CAPT William Hctor. The United States objects to the defense request for this witness. The defense’s proffered testimony regarding PFC Manning’s alleged POI status is not relevant to the Article 32 investigation and will only serve to distract from the relevant issues. *See* RCM 405(a) discussion (the primary objective of the investigation is “to inquire into the truth of the matters set forth in the charges, [to verify] the form of the charges, and to secure information on which to determine what disposition should be made of the case”). The alleged testimony of CAPT Hctor is outside the scope of the Article 32 investigation.

vv. Inmate Christopher Whitfield. The United States objects to the defense request for this witness. The defense’s proffered testimony is cumulative with law enforcement agents, namely SA Toni Graham, SA Mark Mander, SA Calder Robertson, SA David Shaver, SA Alfred Williamson, and SA Troy Bettencourt.

4. The point of contact for this memorandum is the undersigned at (202) 685-1975.



ASHDEN FEIN
CPT, JA
Trial Counsel

CF:
Defense Counsel

Attachment F

8 December 2011

MEMORANDUM FOR Article 32 Investigating Officer, LTC Paul Almanza, 150th Judge Advocate General Detachment, Legal Support Organization, MG Albert C. Lieber USAR Center, 6901 Telegraph Road, Alexandria, Virginia 22310

SUBJECT: Witness Justification - United States v. PFC Bradley E. Manning

1. On 2 December 2011, the defense in the above case served a copy of its witness request on the government. Below, the defense sets forth the relevancy of each witness that the government opposes and notes that under Article 32(b) Uniform Code of Military Justice, PFC Manning has the right to cross-examine witnesses against him, and present anything he may desire either in defense or mitigation.

a. **SA Charles Ames SA Ronald Rock and SA Patrick Wheeler.** As noted in the defense's witness request, the defense believes each of the requested agents is relevant and will provide needed testimony at the Article 32. The defense would like to note that over 22 CID agents participated in the investigation of this case. The fact that the defense-requested agents mirror those of the government (with the exception of SA Ames) should speak to the reasonableness of the defense's request. The defense has requested the attendance of SA Rock and SA Wheeler in order to provide the Investigating Officer with testimony concerning the joint investigations being conducted by both the Department of State and the Federal Bureau of Investigation. Notably, SA Rock was on the original government's witness list filed on 7 July 2010. According to the government's memo dated 7 December 2011, the other agents "SA Graham, SAM Mander, SA Robertson, SA Shaver, SA Williamson and SA Bettencourt can provide the needed testimony." Their testimony, however, will in large part be hearsay evidence about what other agents have done on the case and what witnesses have told these other case agents. Such testimony will do little to aid the Investigating Officer in conducting a "thorough and impartial investigation of all matters" as required by Article 32(a) UCMJ. Further, the defense has a legitimate interest in using the Article 32 hearing as a discovery tool (see discussion to R.C.M. 405(a)). If the defense does not have the opportunity to question the case agents about evidence they developed, witnesses they interviewed, leads they pursued, leads they elected not to pursue, and other relevant matters, the defense will also be denied an important function that the Article 32 investigation is designed to accomplish. Given the status of current and ongoing operations and the fact that case agents are likely spread throughout the United States and overseas, the Article 32 investigation is the only realistic mechanism available to the defense to personally question the case agents involved in the investigation.

b. **Key Leaders of 2nd Brigade Combat Team:** In the defense's witness request, the defense requested that selected key leaders of the 2nd Brigade Combat Team be made available.

1) The relevancy of these witnesses should be obvious. Each of these witnesses can provide different insight into the events that transpired between 1 November 2009 and 27 May 2010. Because each witness viewed the events from a different perspective, their individual

SUBJECT: Witness Justification - United States v. PFC Bradley E. Manning

testimony is independently relevant. The defense notes for example, that all of the requested witnesses provided sworn statements as part of the Secretary of the Army's 15-6 Investigation. This includes COL Miller, LTC Kerns, MAJ Dreher, CPT Freeburg, MSG Usbeck, and MSG Woodworth. The statements from these witnesses provide different and important details about the events.

(a) COL Miller's statement about the perception of the leadership qualities of MAJ Dreher, MAJ Clausen, and MSG Adkins is relevant to their response or lack of a response in this case. Additionally, the fact that COL Miller ultimately decided to remove MAJ Dreher and MAJ Clausen from their respective positions and considered MSG Adkins "marginal, but not bad enough to either relieve or replace" is also relevant and provides mitigation evidence that the Investigating Officer should consider.

(b) LTC Kerns will testify not only to MAJ Clausen's weak performance and the fact that he was not a strong leader, but he will also testify that MAJ Clausen did not take appropriate action to correct mistakes made by junior members in his unit and did not have control over the S-2 shop. LTC Kerns will also testify that MAJ Clausen was handicapped by weak NCO leadership and that MSG Adkins was not an effective leader. LTC Kerns also provides key testimony regarding the S-2 section's failure to initiate a suspension of PFC Manning's security clearance when it became obvious that such action was required.

(c) MAJ Dreher will testify to the fact he was not kept aware of the problems being suffered by PFC Manning. He will testify the MAJ Clausen and MSG Adkins failed to inform him of PFC Manning's mental health issues. Differences in details and differing perspectives such as these cannot be resolved by merely looking at the sworn statements or considering the hearsay testimony of the witnesses the government wishes to bring.

(d) CPT Freeburg, MSG Usbeck, and MSG Woodworth will testify about the command's lack of relevant information from MAJ Clausen and MSG Adkins concerning PFC Manning. The failure to provide this information impacted not only the decision regarding whether to deploy PFC Manning, but also the timeliness of the suspension of PFC Manning's security clearance.

2) In its response to the defense witness request, the government states that the defense's proffered testimony regarding the total breakdown in command and control within the S-2 Section and the multiple failures by the unit to take basic steps in response to clear mental health issues being suffered by PFC Manning is somehow "not relevant to the Article 32 investigation and will only serve to distract from the relevant issues." The government cites to R.C.M. 405(a). Inexplicably, the government ignores R.C.M. 405(f) and controlling case law which clearly states an accused has the right to present evidence in defense, mitigation, and extenuation at the Article 32. See R.C.M. 405(f) (stating an accused has the right to present evidence in defense, mitigation, and extenuation); Article 32(b), Uniform Code of Military Justice (UCMJ) (stating an accused may "present anything he may desire in his own behalf, either in defense or mitigation, and the investigation officer shall examine available witnesses

requested..."); *United States v. Garcia*, 59 M.J. 447, 451 (C.A.A.F. 2004)(ruling that an accused has the right to present anything he may desire in his own behalf at an Article 32 in defense or mitigation). Each of the above requested witnesses will have relevant and independent information of the events that transpired, and all of these witnesses should be produced in order to accomplish the purposes of the investigation. Simply reading the sworn statements of some of these witnesses and hearing from a few others will not allow either party or the Investigating Officer to explore the relevant information. The listed witnesses need to be questioned personally and individually about what they saw, heard, and experienced if there is to be a thorough and impartial investigation.¹

e. Key Members of 2nd Brigade Combat Team's S-2 Section: In the defense's witness request, the defense requested that selected key members of the intelligence section of the 2nd Brigade Combat Team be made available.

1) The relevancy of these witnesses should also be obvious. Each of these witnesses can provide different insight into the events that transpired between 1 November 2009 and 27 May 2010. Because each witness viewed the events from a different perspective, their individual testimony is independently relevant. The defense notes for example, that all of the requested witnesses provided sworn statements as part of the Secretary of the Army's 15-6 Investigation. This includes MAJ Clausen, CPT Kcay, CPT Johnson, 1LT Gaab, 1LT Fields, CW2 Ehresman, SSG Mitchell, SGT Schwab, SGT Padgett, SGT Sadtler, SGT Cooley, and SGT Walsh. The statements from these witnesses provide different and important details about the events. Each of these witnesses can provide unique information regarding not only the dysfunctional leadership scheme by MAJ Clausen and MSG Adkins, but also the numerous recommendations to get PFC Manning help both prior to the deployment and during the deployment. Each witness will provide relevant mitigation and extenuation evidence regarding how the S-2 section failed to notify the company commander of the issues PFC Manning was struggling with or the multiple acts of behavior that should have resulted in an immediate suspension of PFC Manning's security clearance.

2) In its response to the defense witness request for relevant S-2 section witnesses, the government states that the testimony of these witnesses is somehow "not relevant to the Article 32 investigation and will only serve to distract from the relevant issues." The government also opines that the breakdown in command and control, the decision to deploy PFC Manning, and the decision to not suspend his security clearance earlier "is not relevant to the Article 32 Investigation and will only serve to distract from the relevant issues." The government cites to R.C.M. 405(a). Again, the government ignores R.C.M. 405(f) and controlling case law which

¹ It is troubling that in the government's response dated 7 December 2011, it objects to every listed witness by the defense that is not also on the government's list. The government does not seem to be interested at all in providing an thorough and impartial investigation. The government indicates that it is going to go to the expense and trouble of bringing two civilian witnesses and other military witnesses from multiple duty locations in the United States and overseas, and yet the government claims that it is too costly and troublesome to bring any of the defense requested witnesses. Such a position defies logic and common sense.

clearly states an accused has the right to present evidence in defense, mitigation, and extenuation at the Article 32. See R.C.M. 405(f) (stating an accused has the right to present evidence in defense, mitigation, and extenuation); Article 32(b), Uniform Code of Military Justice (UCMJ) (stating an accused may "present anything he may desire in his own behalf, either in defense or mitigation, and the investigation officer shall examine available witnesses requested..."); *United States v. Garcia*, 59 M.J. 447, 451 (C.A.A.F. 2004) (ruling that an accused has the right to present anything he may desire in his own behalf at an Article 32 in defense or mitigation). Each of the above requested witnesses will have relevant and independent information of the events that transpired, and all of these witnesses should be produced in order to accomplish the purposes of the investigation.

d. **Mental Health Providers:** In the defense's witness request, it requested CPT Leibman, CPT Worsley, and CPT Critchfield be made available.

1) The relevancy of these witnesses should also be obvious. Each of these witnesses provided mental health treatment to PFC Manning or conducted a behavioral health examination for the command. Because each witness was involved at different times and in different aspects, their individual testimony is independently relevant.

2) The government states the testimony of these mental health providers "is not relevant to the Article 32 investigation and will only serve to distract from the relevant issues." Additionally, the government points to the fact that a R.C.M. 706 board concluded that "PFC Manning did not have a severe mental disease or defect at the time of the alleged criminal conduct that resulted in him being unable to appreciate the nature and quality or wrongfulness of his conduct" as a basis to ignore any mental health testimony. Such a position is indefensible. The fact PFC Manning did not have a "severe mental disease or defect" only indicates that he does not have a basis to claim an insanity defense. Such a conclusion does not speak to any diminished capacity or mitigating and extenuating circumstances. See R.C.M. 405(f) (stating an accused has the right to present evidence in defense, mitigation, and extenuation); Article 32(b), Uniform Code of Military Justice (UCMJ) (stating an accused may "present anything he may desire in his own behalf, either in defense or mitigation, and the investigation officer shall examine available witnesses requested..."); *United States v. Garcia*, 59 M.J. 447, 451 (C.A.A.F. 2004) (ruling that an accused has the right to present anything he may desire in his own behalf at an Article 32 in defense or mitigation). Each of the above requested witnesses will have relevant and independent information, and all of these witnesses should be produced in order to accomplish the purposes of the investigation.

e. **Original Classification Authorities (OCA):** In the defense's witness request, the defense requested each of the individuals that provided OCA reviews be made available.

1) The relevancy of these witnesses should also be obvious. Each of these witnesses provided a unsworn affidavit under 28 U.S.C. § 1746.

2) The government objected to the defense request for any of these witnesses. The government, without any justification, requested that you find the requested witness were not reasonably available given the importance of their respective position. The government seems to argue that in matters of justice, if you have too important of a position, you should not be bothered. Military justice should not be controlled by the importance of your duty position. Each individual took the time to provide an unsworn affidavit. The defense should be provided with the opportunity to examine these witnesses at the Article 32 hearing.

3) In the event these witnesses are not produced, the defense objects to the Investigating Officer considering their unsworn statements. R.C.M. 405(g)(4)(B). Unsworn statements under 28 U.S.C. § 1746 cannot be considered by the Investigating Officer. The Manual for Courts-Martial requires that testimony given at an Article 32 be under oath. R.C.M. 405(h)(1)(A). If a witness is deemed not reasonably available, the Investigating Officer can consider sworn statements. R.C.M. 405(g)(5)(B)(i). A unsworn statement provided under 28 U.S.C. § 1746 is not a sworn statement. In order for an unsworn statement provided under 28 U.S.C. § 1746 to be admissible, it must be subscribed and signed "in a judicial proceeding or course of justice" in order to subject the declarant to the penalty of perjury at the Article 32 hearing. See Article 131 c(3) (noting that "Section 1746 does not change the requirement that a deposition be given under oath or alter the situation where an oath is required to be taken before a specific person."); See also 28 U.S.C. § 1746 (noting that the unsworn declaration is not effective in "depositions or an oath of office, or an oath required to be taken before a specified official.")

f. Current and Former Members of the U.S. Government: In the defense's witness request, the defense requested President Obama, Secretary Clinton, and former Secretary Gates be made available.

1) The relevancy of these witnesses should be obvious. Each of these witnesses has provided statements that contradict those given by the OCA witnesses regarding the alleged damage caused by the unauthorized disclosures. Additionally, each of these witnesses is relevant in order to inquire into the issues of unlawful command influence and unlawful pretrial punishment in violation of Articles 13 and 37 of the UCMJ. See R.C.M. 405(e) Discussion (stating that inquiry into other issues such as legality of searches or the admissibility of evidence is proper by an Article 32 Investigating Officer).

2) The government apparently has no difficulty obtaining the presence of civilian witnesses when it deems it necessary. The defense requests that the Investigating Officer contact each civilian witness and invite each witness to attend pursuant to R.C.M. 405(g)(2)(B).

3) The defense objects to the witnesses not being produced at the Article 32 based solely on the determination by the government that they are too important to be made available. Assuming the witnesses are not produced, the defense will request a deposition of these witnesses if charges are referred, pursuant to R.C.M. 702 and the holding in *United States v. Chuculate*, 5 M.J. 143 (C.M.A. 1978).

g. **Mental Health Providers at the Quantico Confinement Facility:** In the defense's witness request, the defense requested CAPT Moore and CAPT Hoeter be made available.


1) The relevancy of these witnesses should be obvious. Each of these witnesses has provided statements that would support the fact PFC Manning was subjected to unlawful pretrial punishment under Article 13 of the Uniform Code of Military Justice. See R.C.M. 405(c) Discussion (stating that inquiry into other issues such as legality of searches or the admissibility of evidence is proper by an Article 32 Investigating Officer).

2) The government objects to the defense request, stating that the alleged unlawful pretrial punishment is not relevant at the Article 32 investigation and will only serve to distract from the relevant issues. Whether PFC Manning was unlawfully punished prior to trial is a relevant matter for you to consider. The facts of his unlawful pretrial punishment is appropriate information for you to consider in forming your recommendations to the convening authority. The issue is also important for the integrity of the military justice system and the appearance of fairness in the process.

h. **Inmate Christopher Whitfield:** In the defense's witness request, it requested Inmate Whitfield be made available. The relevancy of this witness should be obvious. Any agent testifying to the matters allegedly heard by Inmate Whitfield would only be testifying to hearsay. Given the potential impact of his testimony, Inmate Whitfield must be produced in order to provide for a thorough and impartial investigation.

2. PFC Manning is charged with offenses that carry the maximum punishment of life without the possibility of parole. His charges are among the most serious charges that a soldier can face. The government must be prepared to accept the costs incurred by the seriousness of the charges that they have preferred against PFC Manning. Anything but the personal appearances of all witnesses requested by the defense and government would deny PFC Manning his right to a thorough and impartial investigation and turn this into a hollow exercise.

3. The government's claim that the cost and burden is too great to require the production and personal appearance of relevant and necessary witnesses is not justified. It was the government's decision to conduct this Article 32 investigation at Fort Meade. The defense's position has been consistent: it does not object to this location provided it has the personal appearance of all relevant and necessary witnesses. The government should not be allowed to use its own decision to conduct the investigation at Fort Meade as a way to avoid making relevant witnesses available.


DAVID EDWARD COOMBS
Civilian Defense Counsel

Attachment G

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Subject: RE: Defense Request to Compel Production of Witnesses

From: "Fein, Ashden CPT USA JFHQ-NCR/MDW SJA"
<Ashden.Fein@jfhqncr.northcom.mil>

Date: Thu, Dec 08, 2011 4:00 pm

To: <coombs@armycourtmarshaldefense.com>, "Almanza, Paul"
<Paul.Almanza@usdoj.gov>

"Morrow III, JoDean, CPT USA JFHQ-NCR/MDW SJA"
<JoDean.Morrow@jfhqncr.northcom.mil>, "Overgaard, Angel M. CPT USA JFHQ-NCR/MDW SJA" <Angel.Overgaard@jfhqncr.northcom.mil>, "Whyte, Jeffrey H. CPT USA JFHQ-NCR/MDW SJA" <Jeffrey.Whyte@jfhqncr.northcom.mil>,
Cc: "Waybright, Daniel W. SGT USA JFHQ-NCR/MDW SJA"
<Daniel.Waybright@jfhqncr.northcom.mil>, "Matthew kemkes"
<matthew.kemkes@us.army.mil>, "Paul Bouchard" <bouchardp@yahoo.com>,
"Tooman, Joshua J CPT MIL US USA TRADOC" <joshua.j.tooman.mil@mail.mil>,
"Holzer, Mark LTC MIL USA OTJAG" <mark.holzer@us.army.mil>, "Melissa Santiago" <mellisa.s.santiago@us.army.mil>

Attach: smime.p7s

Sir,

In short, the United States maintains its objections.

1. We acknowledge the rights of the accused under RCM 405(f). However, we would like to highlight that there is no documented precedence that empowers the defense to use the Article 32 investigation to explore all possible theories of mitigation and extenuation for matters that would only be potentially relevant during the sentencing phase of the trial, if any. As you will see in Garcia, the Court, in dicta, quotes Article 32 stating the "accused has the right to present anything he may desire in his own behalf[.]" but actually rules on the validity of an Article 32 waiver. The defense's proffered testimony is not relevant to the charged misconduct or any mitigation or extenuation evidence towards the alleged acts of the accused (IAW the charge sheet). The defense is simply trying to use the Article 32 as a vehicle to openly explore alleged failures of the chain of command which are not relevant to charges, thus outside the scope of RCM 405 and your charter. In fact, the defense uses the statement "each of these witnesses can provide different insight into the events that transpired between 1 November 2009 and 27 May 2010[.]" however based on the defense's proffer, the "events" are not related to alleged criminal acts of the accused, but the actions of others who interacted with the accused.

2. RCM 405(g)(1)(A) purposely limits witness production for witnesses that are both relevant and not cumulative. Each witness the United States objects to based on cumulative testimony, is in fact cumulative with others on the witness list. The purpose of the Article 32 is to conduct a "thorough and impartial investigation of all matters" and that can still be accomplished by receiving testimony by multiple other witnesses with similar access to information, proximity to the accused, or part of the same joint investigation.

3. As for any witnesses testifying about alleged mental health issues, it does not appear from the defense's proffered testimony that the defense intends to present testimony as to the accused's having partial mental responsibility for the alleged crimes; therefore these witnesses are not relevant to the charges, including mitigation or extenuation on the merits. The United States responses are based solely on defense's proffered testimony. The United States does not argue with the defense that a diminished capacity amounting to a partial mental responsibility defense could be relevant as mitigation and extenuation.

4. The defense's witnesses who they proffer will testify about alleged Articles 13 and 37 violations are not relevant. Our analysis under #1 above applies as well. Additionally, defense's proffered Articles 13 and 37 violations are matters reserved for the convening authority prior to referral and ultimately a military judge at a court-martial, if this case is referred. The substance of these matters and the fact they allegedly occurred after the commission of the alleged offenses make these witnesses not relevant to the accused's alleged misconduct, thus outside the scope of your investigation.

5. The defense misrepresents the government's position in Footnote 1. The United States did not state in its response that it would not entertain travel for defense witnesses based on their production being "too costly and troublesome." The United States will entertain the defense's request for witnesses that are not relevant or cumulative and based on your determination of availability and method of production, will produce the witnesses. Additionally, the United States intends to request some of its witnesses be called telephonically, rather than in person, but cannot make that request until you make a determination on which witnesses you will call as the investigating officer. As of today and absent the government's request to have the senior ranking government officials declared not reasonably available, the United States has not objected to the personal appearance of any witnesses, both the government's or defense's. The United States has objected to you considering certain witnesses based on relevance and/or cumulative production. However, the United States does intend to make future requests to have some witnesses testify telephonically to minimize costs, depending on which witnesses you ultimately order to be produced and are reasonably available.

6. The United States objects to your consideration of Article 131, Perjury, as a reference in determining whether a statement is properly sworn. Article 131 is a punitive article intended to criminalize sworn statements by Servicemembers during a judicial proceeding. The original classification authority (OCA) reviews are simply sworn statements made "under penalty of perjury" IAW 28 U.S.C. 1746. Rather than Article 131, the United States recommends you consider Article 134, False Swearing, and specifically the portion under the explanation which states, "[i]t does not include such statements made in a judicial proceeding or course of justice, as these are under Article 131, perjury..." See MCM, part IV, paragraph 79c(1). Under the defense's proposed analysis, the only sworn statements that you could consider during this investigation, are previously sworn statements given under oath at an Article 32 investigation or court-martial.

Additionally, I added CPT Hunter Whyte to our emails. He is another government counsel.

Attachment H

[Print](#) | [Close Window](#)

Subject: RE: Defense Request to Compel Production of Witnesses

From: coombs@armycourtartialdefense.com

Date: Thu, Dec 08, 2011 4:20 pm

To: "Almanza, Paul" <Paul.Almanza@usdoj.gov>

"Morrow III, JoDean, CPT USA JFHQ-NCR/MDW SJA"

<JoDean.Morrow@jfhqncr.northcom.mil>, "Overgaard, Angel M. CPT USA JFHQ-NCR/MDW SJA" <Angel.Overgaard@jfhqncr.northcom.mil>, "Whyte, Jeffrey H. CPT USA JFHQ-NCR/MDW SJA" <Jeffrey.Whyte@jfhqncr.northcom.mil>, "Waybright, Daniel W. SGT USA JFHQ-NCR/MDW SJA" <Daniel.Waybright@jfhqncr.northcom.mil>,

Cc: "Matthew kemkes" <matthew.kemkes@us.army.mil>, "Paul Bouchard" <bouchardp@yahoo.com>, "Tooman, Joshua J CPT MIL US USA TRADOC" <joshua.j.tooman.mil@mail.mil>, "Holzer, Mark LTC MIL USA OTJAG" <mark.holzer@us.army.mil>, "Melissa Santiago" <melissa.s.santiago@us.army.mil>, "Ashden Fein" <Ashden.Fein@jfhqncr.northcom.mil>

LTC Almanza,

Just a quick response to correct a couple of statements by government counsel. The government's position on the relevance of the requested witness (both unit and mental health witnesses) "as only being relevant during sentencing" is erroneous. If needed, the defense will file a sealed *ex-parte* motion to explain its theory of relevance on the merits.

A declaration under 28 U.S.C. Section 1746 is an "Unsworn Statement." As such, unlike sworn statements under 2823, these statements are not admissible over defense objection unless signed during the Article 32 hearing. A plain reading of 28 U.S.C Section 1746 and R.C.M. 405(h)(1)(A) undercuts the government's position. The analysis to Article 131 also reaffirms the defense's position.

Best,
David

David E. Coombs, Esq.
Law Office of David E. Coombs
11 South Angell Street, #317
Providence, RI 02906
Toll Free: 1-800-588-4156
Local: (508) 689-4616
Fax: (508) 689-9282
coombs@armycourtartialdefense.com
www.armycourtartialdefense.com

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Attachment I

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Subject: RE: Telephonic 802

From: coombs@armycourt martialdefense.com

Date: Mon, Dec 12, 2011 5:44 pm

To: "Almanza, Paul" <Paul.Almanza@usdoj.gov>, Ashden.Fein@jfhqncr.northcom.mil
matthew.kemkes@us.army.mil, paul.r.bouchard.mil@mail.mil,

Cc: JoDean.Morrow@jfhqncr.northcom.mil, Angel.Overgaard@jfhqncr.northcom.mil,
melissa.s.santiago@us.army.mil

LTC Almanza,

28 U.S.C. 1746 Statements

In response to your request for us to look at 2010 WL 2265833 and 2002 WL 243445, the defense's position is that both cases are inapplicable to the situation at hand. In *Faison*, the IO found that TRD was unavailable and that her videotaped statement was sworn. Such a determination was appropriate given the fact TRD responded to questions indicating that she knew the difference between the truth and a lie and promised to tell the truth. As the IO and the AFCCA correctly concluded, this colloquy more than adequately satisfied the oath/affirmation requirement so as to make TRD's videotaped statement a sworn statement under R.C.M. 405(g)(4)(B)(i). In the instant case, unsworn statements under 28 U.S.C. § 1746 do not share any of the same hallmarks of a sworn statement. The statements are not made in front of anyone and the statements are not similar, in that they are not made in front of a person authorized to administer oaths.

Likewise, *Elsevier* dealt with a videotaped interview that was done without a formal swearing or oath. However, it qualified as a sworn statement in accordance with R.C.M. 405(g)(4)(B)(i) since on a later date the unavailable witness did swear to the truth of the statements contained therein. The IO correctly found this to be a sworn adoption of the videotaped interviews that, pursuant to *United States v. Wood*, 36 M.J. 651 (A.C.M.R. 1992), rendered it admissible. None of the individuals who provided the unsworn statements under 28 U.S.C. § 1746 have subsequently provided a sworn adoption of their unsworn statement in accordance with R.C.M. 405(g)(4)(B)(i).

An unsworn statement provided under 28 U.S.C. § 1746 does not qualify as a sworn statement. In order for an unsworn statement provided under 28 U.S.C. § 1746 to be admissible, it must be subscribed and signed "in a judicial proceeding or course of justice" at the Article 32 hearing. A plain reading of 28 U.S.C. Section 1746 and R.C.M. 405(h)(1)(A) undercuts any argument to the contrary.

Closure

While the Defense acknowledges the general right of the public to attend criminal

proceedings, such right is not unfettered and must be balanced by the right of the accused to a fair trial. Specifically, the Defense maintains that the public's interest in five discrete pieces of evidence, which may or may not be admissible if the case proceeds to trial, is not sufficiently overwhelming to override the accused's right to a fair trial. It is important to note that all of the cases in this area involve the government attempting to close the Article 32 hearing while the accused was attempting to assert the right to a public hearing. Here, it is the accused who is asserting his right to close parts of the hearing in order to preserve the integrity of the judicial process and to ensure his right to a fair trial. The Government can point to no harm to its case based upon the defense's request. Instead, the discussion seems to be centered on subsequent steps that a military judge can take to cure any error at the Article 32. This analysis is misguided given the relative ease of avoiding the harm and the limited nature of the defense's request. Certainly, to the extent that we are going to err, we should err on the side of caution. In this instance, that would mean closing the hearing during those limited times requested by the defense.

AIT Training

The defense has attached the referenced email regarding the IT training.

Best,
David

David E. Coombs, Esq.
Law Office of David E. Coombs
11 South Angell Street, #317
Providence, RI 02906
Toll Free: 1-800-588-4156
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Attachment J

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Subject: RE: Telephonic 802

From: "Fein, Ashden CPT USA JFHQ-NCR/MDW SJA" <Ashden.Fein@jfhqncr.northcom.mil>

Date: Mon, Dec 12, 2011 9:01 pm

To: <coombs@armycourtartialdefense.com>, "Almanza, Paul"
<Paul.Almanza@usdoj.gov>

"Matthew kemkes" <matthew.kemkes@us.army.mil>,
<paul.r.bouchard.mil@mail.mil>, "Morrow III, JoDean, CPT USA JFHQ-NCR/MDW SJA"
<JoDean.Morrow@jfhqncr.northcom.mil>, "Overgaard, Angel M. CPT USA JFHQ-
Cc: NCR/MDW SJA" <Angel.Overgaard@jfhqncr.northcom.mil>,
<melissa.s.santiago@us.army.mil>, "Whyte, Jeffrey H. CPT USA JFHQ-NCR/MDW
SJA" <Jeffrey.Whyte@jfhqncr.northcom.mil>

Attach: smime.p7s

Sir,

The United States maintains its previously stated position on both the validity of the sworn statements and keeping the hearing open to the public in order to reduce public scrutiny and ensure transparency of the military justice process.

Our systems were down tonight, and we will send a copy of the email the defense referenced tomorrow.

v/r
CPT Fein

-----Original Message-----

From: coombs@armycourtartialdefense.com [mailto:coombs@armycourtartialdefense.com]

Sent: Monday, December 12, 2011 5:44 PM

To: Almanza, Paul; Fein, Ashden CPT USA JFHQ-NCR/MDW SJA

Cc: Matthew kemkes; paul.r.bouchard.mil@mail.mil; Morrow III, JoDean, CPT USA JFHQ-NCR/MDW SJA; Overgaard, Angel M. CPT USA JFHQ-NCR/MDW SJA; melissa.s.santiago@us.army.mil

Subject: RE: Telephonic 802

LTC Almanza,

28 U.S.C. 1746 Statements

In response to your request for us to look at 2010 WL 2265833 and 2002 WL 243445, the defense's position is that both cases are inapplicable to the situation at hand. In Faison, the IO found that TRD was unavailable and that her videotaped statement was sworn. Such a determination was appropriate given the fact TRD responded to questions indicating that she knew the difference between the truth and a lie and promised to tell the truth. As the IO and the AFCCA correctly concluded, this colloquy more than adequately satisfied the oath/affirmation requirement so as to make TRD's videotaped statement a sworn statement under R.C.M. 405(g)(4)(B)(i). In the instant case, unsworn statements under 28 U.S.C. § 1746 do not share any of the same hallmarks of a sworn statement. The statements are not made in front of anyone and the statements are not similar, in that they are not made in front of a person authorized to administer oaths.

Likewise, Elsevier dealt with a videotaped interview that was done without a formal swearing or oath. However, it qualified as a sworn statement in accordance with R.C.M. 405(g)(4)(B)(i) since on a later date the unavailable witness did swear to the truth of the statements contained therein. The IO correctly found this to be a sworn adoption of the videotaped interviews that, pursuant to United States v. Wood, 36 M.J. 651 (A.C.M.R. 1992), rendered it admissible. None of the individuals who provided the unsworn statements under 28 U.S.C. § 1746 have subsequently provided a sworn adoption of their unsworn

Attachment K

Print | Close Window

Subject: Determinations and Evidence List (UNCLASSIFIED)

From: "Almanza, Paul R LTC RES USAR USARC" <paul.r.almanza@us.army.mil>

Date: Wed, Dec 14, 2011 2:18 pm

To: "Almanza, Paul" <Paul.Almanza@usdoj.gov>, coombs@armycourtmartrialdefense.com, Ashden.Fein@jfhqncr.northcom.mil paul.r.bouchard.mil@mail.mil, Angel.Overgaard@jfhqncr.northcom.mil, mark.holzer@us.army.mil, matthew.kemkes@us.army.mil,
Cc: Jeffrey.Whyte@jfhqncr.northcom.mil, Ashden.Fein@jfhqncr.northcom.mil, JoDean.Morrow@jfhqncr.northcom.mil, melissa.s.santiago@us.army.mil

Attach: 28 USC 1746 Legislative History.rtf

US v. Gunderman (67 MJ 683).rtf

Nissho-Iwai v Kline (845 F2d 1300).rtf

Hart v Hairston (343 F3d 762) 2003.rtf

Manning Article 32 Def Obj to Gov Evid Determin 121411.doc

Manning Article 32 Evidence List 121411.doc

Classification: UNCLASSIFIED

Counsel -

Three issues, listed below. And in addition to attaching the documents referenced in 1., below, I am also attaching my determinations regarding defense objections to government evidence and my evidence list.

1. Statements under penalty of perjury. I received legal advice from my legal advisor yesterday concerning whether a statement under penalty of perjury constitutes a "sworn statement" permitting it to be considered over defense objection if the witness is not reasonably available. The advice was that in accordance with the text of 28 U.S.C. Section 1746, a declaration under penalty of perjury is legally given "like force and effect" of a sworn statement and for purposes of consideration as an alternative to testimony at the Article 32 may be considered as a sworn statement. LTC Holzer also advised that the discussion to Article 131 (see para. 57c(3)) mentions signing a summarized transcript of Article 32 testimony under penalty of perjury, which indicates that such statements signed outside of an Article 32 hearing but associated with such an investigation can be considered. I also note that the classification review statements at issue all indicate that they are in the "course of justice" as they all indicate the persons making the statements knew they were being prepared for use in this case. As such, I consider these statements to have the same indicia of reliability as sworn statements.

Based on his advice and my review of the indicia of reliability, I intend to consider the statements made under penalty of perjury provided by RADM Kevin Donegan, Mr. Robert Betz, LtGen Robert Schmidle, VADM Robert Harward, Mr. Patrick Kennedy, RADM David Woods, and the person subscribing Bates numbers 00378148-00378175 and 00410623-00410634.

LTC Holzer provided four documents, attached, supporting his advice:

- a. The legislative history of 28 U.S.C. Section 1746.
- b. US v. Gunderman, 67 M.J. 683 (A.C.C.A. 2009)
- c. Nissho-Iwai v. Kline, 845 F.2d 1300 (5th Cir. 1988)
- d. Hart v. Hairston, 343 F.3d 762 (5th Cir. 2003).

2. Request for reconsideration of closure determination/request for media exclusion and gag order. I recognize that the defense disagrees with my determination that reasonable alternatives to closure, such as thorough voir dire of the panel members and appropriate rulings and instructions by the military judge, would ensure that should this case be referred to trial, PFC Manning would receive a fair trial.

However, I do not believe that the defense has shown why these alternatives to closure are insufficient. Additionally, with respect to the defense's reference to "high-ranking officials ... hav[ing] made improper comments concerning PFC Manning's probable guilt and appropriate punishment," in Mr. Coombs's 131621 December 2011 email, I find that thorough voir dire and appropriate rulings and instructions by the military judge will adequately address the risk of unlawful command influence. I therefore deny the defense's request for reconsideration of my closure determination. With respect to the defense's request to exclude the media from discussion of the five topics at issue and to issue a gag order preventing other witnesses from discussing those topics, those requests are denied.

3. Invocation of Article 31/Fifth Amendment rights. The recommendation I received from my legal advisor was that once witnesses invoke their Article 31 or Fifth Amendment rights, those witnesses are not reasonably available. LTC Holzer also recommended that counsel for the witnesses be contacted to determine whether there are any areas of inquiry that the witness could respond to questioning without invoking their rights. Should it be the case that counsel indicate there are no areas that the witnesses will discuss without invoking their rights, LTC Holzer recommended that the witness be called in lieu of relying on a written statement of their intent to invoke their rights. Accordingly, I intend to call both SFC Adkins and WO1 Balonek as noted below.

Thank you.

LTC Almanza

On 12/14/11, coombs@armycourtmarshaldefense.com wrote:

> LTC Almanza,

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> I will be available on my cell at 1500.

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> Best,

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>

> David

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>

> David E. Coombs, Esq.

> Law Office of David E. Coombs

> 11 South Angell Street, #317

> Providence, RI 02906

>
>

> Toll Free: 1-800-588-4156

>
>

Attachment L



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
150TH JUDGE ADVOCATE GENERAL DETACHMENT (LSO)
MG ALBERT C. LIEBER USAR CENTER
6901 TELEGRAPH ROAD
ALEXANDRIA, VIRGINIA 22310-3320

AFRC-MJVA

14 December 2011

MEMORANDUM FOR US v. Manning Article 32(b) Participants

SUBJECT: Determinations as to Defense Requested Witnesses

1. This document provides my determinations as to defense requested witnesses.

- a. SA Toni Graham – she is not reasonably available because while her testimony is relevant, she is located in Hawaii and the significance of her expected testimony with respect to the first month of the investigation and her personal appearance does not outweigh the difficulty and cost of obtaining her presence at the investigation.
- b. SA Mark Mander – reasonably available.
- c. SA Calder Robertson – he is not reasonably available because while his testimony is relevant, he is located in Germany and the significance of his expected testimony with respect to obtaining the collection of digital evidence and forensic imaging does not outweigh the difficulty and cost of obtaining his presence at the investigation.
- d. SA David Shaver – reasonably available.
- e. SA Charles Ames – his expected testimony is cumulative with other law enforcement witnesses involved in the investigation; to the extent his testimony would cover the collection of classified information for the Information Review Task Force's damage assessment, I understand from the 12 December 2011 telephone conference with CPT Fein and Mr. Coombs that the government does not have the authority to disclose damage assessments and thus I conclude that any testimony concerning such topics would not be permissible.
- f. SA Alfred Williamson – reasonably available.
- g. SA Troy Bettencourt – reasonably available.
- h. SA Ronald Rock – as the law enforcement investigation was a joint investigation, his expected testimony is cumulative with other law enforcement witnesses involved in the investigation.
- i. SA Patrick Wheeler – as the law enforcement investigation was a joint investigation, his expected testimony is cumulative with other law enforcement witnesses involved in the investigation; moreover, his testimony concerning his contacts with Mr. Adrian Lamo is cumulative with Mr. Lamo's testimony.
- j. CPT Martin Liebman – his expected testimony is not relevant to the form of the charges, the truth of the charges, or information as may be necessary to make an informed recommendation as to disposition; specifically, CPT Liebman's concerns about PFC Manning's mental health did not rise to the level of causing him to indicate that PFC Manning was not suitable for continued access to classified material, and thus are not relevant to a determination as to whether PFC Manning

- committed the charged offenses and if so, what the disposition of those charges should be. (I note that with respect to all the defense-requested witnesses concerning PFC Manning's mental health issues, the government has stated that on 22 April 2011, an R.C.M. 706 board concluded that "PFC Manning did not have a severe mental disease or defect at the time of the alleged criminal conduct that resulted in him being unable to appreciate the nature and quality or wrongfulness of his conduct.")
- k. CPT Michael Worsley – his expected testimony is not relevant to the form of the charges, the truth of the charges, or information as may be necessary to make an informed recommendation as to disposition; specifically, CPT Worsley's concerns about PFC Manning's behavior and issues did not rise to the level of causing him to recommend to the command that they should suspend PFC Manning's clearance and thus is not relevant to a determination as to whether PFC Manning committed the charged offenses and if so, what the disposition of those charges should be.
 - l. CPT Edan Critchfield - his expected testimony is not relevant to the form of the charges, the truth of the charges, or information as may be necessary to make an informed recommendation as to disposition; specifically, CPT Critchfield only recommended that PFC Manning was not suitable for continued access to classified material and that his security clearance should be suspended on 28 May 2010, after the dates of all charged offenses, and despite his determination on 22 May 2010 that PFC Manning was at risk to himself and others, he did not make a recommendation as to PFC Manning's continued access to classified information on that date due to having been informed that PFC Manning was no longer allowed in the T-SCIF, and thus is not relevant to a determination as to whether PFC Manning committed the charged offenses and if so, what the disposition of those charges should be.
 - m. COL David Miller – his expected testimony is not relevant to the form of the charges, the truth of the charges, or information as may be necessary to make an informed recommendation as to disposition; specifically, whether the command could or should have monitored and addressed PFC Manning's conduct and behavior better, and whether the command should have removed his access to classified information earlier, is not relevant to a determination as to whether PFC Manning committed the charged offenses and if so, what the disposition of those charges should be.
 - n. LTC Brian Kerns – his expected testimony is not relevant to the form of the charges, the truth of the charges, or information as may be necessary to make an informed recommendation as to disposition; specifically, whether the command could or should have monitored and addressed PFC Manning's conduct and behavior better, and whether the command should have removed his access to classified information earlier, is not relevant to a determination as to whether PFC Manning committed the charged offenses and if so, what the disposition of those charges should be. Moreover, his information as to whether unauthorized media/programs were commonly on SIPRNET computers is cumulative to the testimony of CPT Cherepko, CPT Keay, and SGT Padgett, and his testimony as to remedial measures the command took to improve INFOSEC measures is not relevant as it post-dates the charged offenses.

- o. MAJ Elijah Dreher – his expected testimony is not relevant to the form of the charges, the truth of the charges, or information as may be necessary to make an informed recommendation as to disposition; specifically, whether the command could or should have monitored and addressed PFC Manning's mental health issues better, and should have left PFC Manning back instead of taking him on the deployment, and whether or not he was aware or should have been aware of PFC Manning's mental health issues, is not relevant to a determination as to whether PFC Manning committed the charged offenses, and if so, what the disposition of those charges should be.
- p. MAJ Clifford D. Clausen – his expected testimony is not relevant to the form of the charges, the truth of the charges, or information as may be necessary to make an informed recommendation as to disposition; specifically, whether the command could or should have monitored and addressed PFC Manning's conduct and behavior better is not relevant to a determination as to whether PFC Manning committed the charged offenses and if so, what the disposition of those charges should be. Moreover, his information as to whether music CDs were allowed in the T-SCIF is cumulative to the testimony of CPT Cherepko, CPT Keay, and SGT Padgett.
- q. CPT Barclay Keay – not reasonably available due to previously scheduled leave; although he would have been available on 3 or 4 January 2012, the significance of his testimony does not outweigh the delay in securing his personal appearance. I understand the government and the defense join in requesting that he be considered not reasonably available and that he testify by telephone.
- r. CPT Matthew W. Freeburg – his expected testimony is not relevant to the form of the charges, the truth of charges, or information as may be necessary to make an informed recommendation as to disposition; specifically, whether the command could have monitored and addressed PFC Manning's conduct and mental health issues better, the circumstances of his removing PFC Manning from the T-SCIF and assigning him to the supply room, the Article 15 PFC Manning received, CPT Freeburg's interaction with CPT Worsley where he received CPT Worsley's opinion as to the extent of PFC Manning's condition, his sending PFC Manning to CPT Critchfield for an evaluation, and his initiation of chapter paperwork, is not relevant to a determination as to whether PFC Manning committed the charged offenses, especially as CPT Critchfield did not recommend that PFC Manning's access to classified information be rescinded. His information as to whether videogames, movies, and music was placed on the SIPRNet is cumulative to the testimony of CPT Cherepko, CPT Keay, and SGT Padgett.
- s. CPT Steven Lim – reasonably available.
- t. CPT Thomas Cherepko – reasonably available.
- u. CPT Michael Johnson – his expected testimony is not relevant to the form of the charges, the truth of the charges, or information as may be necessary to make an informed recommendation as to disposition; specifically, whether the command could or should have monitored and addressed PFC Manning's conduct and behavior better is not relevant to a determination as to whether PFC Manning committed the charged offenses and if so, what the disposition of those charges should be.

- v. 1LT Tanya Gaab – her expected testimony is not relevant to the form of the charges, the truth of the charges, or information as may be necessary to make an informed recommendation as to disposition; specifically, whether the command could or should have monitored and addressed PFC Manning's conduct and mental health issues better, and why they did not remove him from the T-SCIF earlier, is not relevant to a determination as to whether he committed the charged offenses and if so, what the disposition of those charges should be.
- w. 1LT Elizabeth Fields – her expected testimony is not relevant to the form of the charges, the truth of the charges, or information as may be necessary to make an informed recommendation as to disposition; specifically, whether the command could or should have monitored and addressed PFC Manning's conduct and mental health issues better, and why they did not remove him from the T-SCIF earlier, is not relevant to a determination as to whether he committed the charged offenses and if so, what the disposition of those charges should be. Her information as to whether CDs and DVDs were permitted in the T-SCIF is cumulative to the testimony of at least CPT Lim and SGT Padgett.
- x. CW2 Joshua Ehresman – his expected testimony is not relevant to the form of the charges, the truth of the charges, or information as may be necessary to make an informed recommendation as to disposition; specifically, whether the command could or should have monitored and addressed PFC Manning's conduct and behavior better, and whether the command should have taken PFC Manning on the deployment, as well as CW2 Ehresman's recommendation, after an incident in which he intervened, that PFC Manning have his weapon's bolt removed, be sent to mental health, and then be separated from the Army, which resulted in no action being taken, is not relevant to a determination as to whether PFC Manning committed the charged offenses and if so, what the disposition of those charges should be.
- y. MSG Eric Usbeck – his expected testimony is not relevant to the form of the charges, the truth of the charges, or information as may be necessary to make an informed recommendation as to disposition; specifically, whether the command could or should have monitored and addressed PFC Manning's conduct and behavior better, and whether the command should have taken PFC Manning on the deployment, as well as his counseling PFC Manning and referring him to mental health for evaluation, and his not personally following up after learning that PFC Manning did not in fact go to mental health is not relevant to a determination as to whether PFC Manning committed the charged offenses and if so, what the disposition of those charges should be. Additionally, his information as to the counseling of PFC Manning is cumulative with Ms. Showman's.
- z. MSG Mark Woodworth – his expected testimony is not relevant to the form of the charges, the truth of the charges, or information as may be necessary to make an informed recommendation as to disposition; specifically, his being briefed on PFC Manning's issue with another soldier or his assault on SPC Showman, and his knowledge that PFC Manning was moved to the supply room, and his lack of recollection about any discussion of sending PFC Manning back to the States or chaptering him out, and his knowledge of the search of PFC Manning's quarters and

- work space, is not relevant to a determination as to whether PFC Manning committed the charged offenses and if so, what the disposition of those charges should be.
- aa. SFC Paul Adkins – reasonably available (pending invocation of rights issue).
 - bb. SSG Lawrence Mitchell – his expected testimony is not relevant to the form of the charges, the truth of the charges, or information as may be necessary to make an informed recommendation as to disposition; specifically, whether the whether the command could or should have monitored and addressed PFC Manning's conduct and behavior better, whether SFC Adkins did not do anything to address PFC Manning's issues, whether PFC Manning was gay, and whether the command should have chaptered him out of the Army, is not relevant to a determination as to whether PFC Manning committed the charged offenses and if so, what the disposition of those charges should be.
 - cc. SGT Rebecca Schwab – her expected testimony is not relevant to the form of the charges, the truth of the charges, or information as may be necessary to make an informed recommendation as to disposition; specifically, whether PFC Manning was gay and whether he had emotional issues that made him difficult to adjust to military life is not relevant to a determination as to whether he committed the charged offenses and if so, what the disposition of those charges should be.
 - dd. SGT Daniel Padgett – reasonably available.
 - ee. SGT David Sadtler – his expected testimony is not relevant to the form of the charges, the truth of the charges, or information as may be necessary to make an informed recommendation as to disposition; specifically, whether the command ostracized PFC Manning and did not support him, and disregarded his concerns about a particular report, is not relevant to a determination as to whether he committed the charged offenses and if so, what the disposition of those charges should be.
 - ff. SGT Lorena Cooley – her expected testimony is not relevant to the form of the charges, the truth of the charges, or information as may be necessary to make an informed recommendation as to disposition; specifically, whether PFC Manning was picked on by other soldiers because they assumed he was gay, the nature of SFC Adkin's leadership, and whether PFC Manning should have gotten help for his issues before they deployed is not relevant to a determination as to whether he committed the charged offenses and if so, what the disposition of those charges should be. Additionally, her information about CDs for music and movies being placed on SIPRNET computers is cumulative to at least CPT Cherepko and CPT Keay.
 - gg. SGT Sheri Walsh – her expected testimony is not relevant to the form of the charges, the truth of the charges, or information as may be necessary to make an informed recommendation as to disposition; specifically, whether PFC Manning had relationship and gender identity issues and whether other soldiers made fun of him due to his size and their belief he was gay, his response to a particular incident, and her opinion as to whether the Army was a good fit for him at this time of his life, is not relevant to a determination as to whether he committed the charged offenses and if so, what the disposition of those charges should be.
 - hh. Ms. Jihreah Showman – she is not reasonably available because while her testimony is relevant, she is located in Syracuse, NY and the significance of her expected

testimony with respect to her recommendation to SFC Adkins that PFC Manning not deploy due to his emotional issues, the circumstances of her viewing the "Apache video" in the T-SCIF, and her experiences as PFC Manning's direct supervisor do not outweigh the difficulty and cost of obtaining her presence at the investigation.

- ii. Mr. Adrian Lamo – reasonably available.
- jj. President Barack Obama – his expected testimony is not relevant to the form of the charges, the truth of the charges, or information as may be necessary to make an informed recommendation as to disposition; specifically, whether any statements by President Obama may have influenced the prosecution in this case, the extent of the harm caused by the alleged disclosures, or the alleged problem of over-classification is not relevant to a determination as to whether PFC Manning committed the charged offenses and if so, what the disposition of those charges should be. The defense may of course *voir dire* the investigating officer to inquire as to whether any unlawful command influence taints the Article 32 investigation.
- kk. Former Secretary Robert Gates – his expected testimony is not relevant to the form of the charges, the truth of the charges, or information as may be necessary to make an informed recommendation as to disposition; specifically, the extent of the harm caused by the charged offenses, the initial public descriptions of the harm caused by the charged offenses, and the effect of the charged offenses on foreign policy is not relevant to a determination as to whether PFC Manning committed the charged offenses and if so, what the disposition of those charges should be. Additionally, to the extent his testimony would cover the damage review conducted by the Information Review Task Force's damage assessment, I understand from the 12 December 2011 telephone conference with CPT Fein and Mr. Coombs that the government does not have the authority to disclose damage assessments and thus I conclude that any testimony concerning such topics would not be permissible.
- ll. Secretary Hillary Clinton – her expected testimony is not relevant to the form of the charges, the truth of the charges, or information as may be necessary to make an informed recommendation as to disposition; specifically, her raising the issue of the disclosed diplomatic cables with foreign leaders, the extent of the harm caused by the charged offenses, and the effect of the alleged disclosures on foreign policy is not relevant to a determination as to whether PFC Manning committed the charged offenses and if so, what the disposition of those charges should be.
- mm. CPT James Kolky – his expected testimony is not relevant to the form of the charges, the truth of the charges, or information as may be necessary to make an informed recommendation as to disposition; specifically, whether three Apache gun videos that were sent to his Division were not classified at the time of their alleged release and whether they should have been, recognizing that the government states the video is not classified and does not allege it is classified, is not relevant to a determination as to whether PFC Manning committed the charged offenses and if so, what the disposition of those charges should be.
- nn. RADM Kevin Donegan – he is not reasonably available because while his testimony is relevant, he is located in Florida and is CENTCOM's Director of Operations; the significance of his expected testimony with respect to his classification

determinations concerning the two PowerPoints at issue does not outweigh the difficulty, expense, and effect on military operations of obtaining his presence at the investigation.

- oo. Mr. Robert Betz – he is not reasonably available because while his testimony is relevant, he is CYBERCOM's Chief Classification Advisory Officer; the significance of his expected testimony with respect to his classification determinations concerning the alleged chat logs between Mr. Lamo and PFC Manning does not outweigh the effect on military operations of obtaining his presence at the investigation.
- pp. LtGen Robert Schmidle, Jr. – he is not reasonably available because while his testimony is relevant, he is CYBERCOM's Deputy Commander; the significance of his expected testimony with respect to his classification determinations concerning the alleged chat logs between Mr. Lamo and PFC Manning does not outweigh the effect on military operations of obtaining his presence at the investigation.
- qq. VADM Robert Harward – he is not reasonably available because while his testimony is relevant, he is located in Florida and is CENTCOM's Deputy Commander; the significance of his expected testimony with respect to his classification determinations concerning the CIDNE Afghanistan Events, CIDNE Iraq Events, other briefings and the BE22 PAX.wmv video does not outweigh the difficulty, expense, and effect on military operations of obtaining his presence at the investigation.
- rr. Mr. Patrick Kennedy – he is not reasonably available because while his testimony is relevant, he is Undersecretary of State for Management; the significance of his expected testimony with respect to his classification determinations concerning diplomatic cables does not outweigh the difficulty of obtaining his presence at the investigation.
- ss. RADM David Woods – he is not reasonably available because while his testimony is relevant, he is Commander of the Joint Task Force - Guantanamo; the significance of his expected testimony with respect to his classification determinations concerning the documents at issue does not outweigh the difficulty, expense, and effect on military operations of obtaining his presence at the investigation.
- tt. CAPT Kevin Moore – his expected testimony is not relevant to the form of the charges, the truth of the charges, or information as may be necessary to make an informed recommendation as to disposition; specifically, whether the Security Battalion commander at the Quantico Brig made determinations concerning Prevention of Injury precautions that behavioral health did not believe were necessary is not relevant to a determination as to whether PFC Manning committed the charged offenses and if so, what the disposition of those charges should be.
- uu. CAPT William Hochter – his expected testimony is not relevant to the form of the charges, the truth of the charges, or information as may be necessary to make an informed recommendation as to disposition; specifically, whether the Security Battalion commander at the Quantico Brig made determinations concerning Prevention of Injury precautions that behavioral health did not believe were necessary is not relevant to a determination as to whether PFC Manning committed the charged offenses and if so, what the disposition of those charges should be.

- vv. Inmate Christopher Whitfield – he is not reasonably available because while his testimony is relevant, he is currently confined at Fort Leavenworth, Kansas; the significance of his expected testimony with respect to alleged statements made by PFC Manning does not outweigh the difficulty, expense, and effect on military operations of obtaining his presence at the investigation.
2. Please address all questions or concerns to the undersigned at paul.r.almanza@us.army.mil and paul.almanza@usdoj.gov.
3. POC for this memorandum is the undersigned.

PAUL R. ALMANZA
LTC, JA, USAR
Investigating Officer

CF:

MAJ Matthew Kemkes (at matthew.kemkes@us.army.mil)
CPT(P) Paul Bouchard (at paul.r.bouchard.mil@mail.mil)
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LTC Mark Holzer (at mark.holzer@us.army.mil)

Attachment M

IN THE UNITED STATES ARMY
FIRST JUDICIAL CIRCUIT

UNITED STATES

v.

MANNING, Bradley E., PFC

U.S. Army, xxx-xx-[REDACTED]

Headquarters and Headquarters Company, U.S.

Army Garrison, Joint Base Myer-Henderson Hall,

Fort Myer, VA 22211

DEFENSE MOTION

REQUESTING RECUSAL OF

INVESTIGATING OFFICER

UNDER R.C.M. 902(a)

DATED: 16 December 2011

RELIEF SOUGHT

1. PFC Bradley E. Manning, by and through counsel, moves the Investigating Officer, pursuant to R.C.M. 902(a), to recuse himself in the instant case.

BURDEN OF PERSUASION AND BURDEN OF PROOF

2. As the moving party, the defense has the burden of persuasion. R.C.M. 905(c)(2). The burden of proof is by a preponderance of the evidence. R.C.M. 905(c)(1).

FACTS

3. The Investigating Officer in this case is a career prosecutor for the Department of Justice. He has spent approximately 10 years prosecuting crimes on behalf of the United States government.

4. The Department of Justice has separately initiated, and is currently pursuing, a collateral investigation into the alleged crimes in this case. As part of that investigation, several individuals who may know or have come into contact with PFC Manning have been subpoenaed and ordered to testify at a grand jury hearing.

5. The defense requested in the Defense Request for Production of Evidence on 22 November 2011, that the information obtained pursuant to the investigation being conducted by the Department of Justice be turned over to the defense. The Investigating Officer denied that request.

6. Both the defense and the government submitted a request for the production of witnesses at the Article 32 hearing. The Investigating Officer ruled that each and every government witness was relevant to the proceeding, though certain of the witnesses were deemed not reasonably available. Of the 38 witnesses that the defense requested that were not also requested by the

government, the Investigating Officer ordered only two witnesses to appear at the Article 32 hearing. In reality, one is not currently able to appear in person at the Article 32 hearing so the defense has agreed to allow that individual to testify telephonically. This means that only *one* defense witness (out of 38) will appear at the Article 32 in person. In effect, the Investigating Officer's ruling means that virtually all of the witnesses testifying will be government witnesses.

7. The defense also filed a motion dated 28 November 2011 requesting the Investigating Officer to close the hearing during instances in which the government intended to elicit four or five particular instances of alleged uncharged misconduct. The defense noted that the evidence is unreliable, likely inadmissible in a court-martial, and prejudicial to the accused. The Investigating Officer agreed that "[T]here is a substantial probability that an overriding interest will be prejudiced if proceedings remain open." However, he was of the view that options short of closure could remedy any potential prejudice of panel members. The defense asked the Investigating Officer to reconsider his ruling on closure; he refused to do so.

8. In the alternative, the defense asked that the Investigating Officer exclude media from the courtroom during the portions of the hearing in which the instances of alleged uncharged misconduct were referenced. According to the Manual for Courts Martial, this would not constitute "closure" and thus would not be subject to the four part test outlined in R.C.M. 806(b)(2). The defense further requested that the Investigating Officer impose a gag order on all remaining (non-media) participants, prohibiting them from speaking about the alleged uncharged misconduct. The Investigating Officer denied the defense's request.

9. On 8 December 2011, the defense filed a Request to Compel Production of Witnesses, including six Original Classification Authorities (OCAs). The government opposed the defense's request and sought to introduce unsworn statements of the OCAs in lieu of sworn statements under 405(g)(4)(B). The Investigating Officer engaged in extensive research on behalf of the prosecution, producing five cases that he claimed supported the government's position. The government, for its part, did not produce one case to support its argument. Ultimately, the Investigating Officer ruled in favor of the prosecution on the admissibility of the unsworn statements. Notably, the Investigating Officer began his own independent research on this issue even prior to notifying the defense of his decision on whether the OCAs would be produced.

WITNESSES/EVIDENCE

10. The following evidence is adduced in support of this motion:

- a) Resume of LTC Paul Almanza;
- b) Government Requested Witness List for Article 32 Investigation;
- c) Defense Request for Article 32 Witnesses;
- d) Defense Request to Compel Production of Witnesses (8 December 2011);
- e) Defense Request for Production of Evidence (22 November 2011);
- f) Defense Request to Compel Production of Evidence (1 December 2011);
- g) Sealed Defense Motion for a Closed Hearing under Rule 405(h)(3).

- h) Sealed Defense Response to Government's 405(h)(3) filing.
- i) Emails pertaining to government's request to introduce unsworn statements of OCAs.

LEGAL AUTHORITY AND ARGUMENT

11. It is trite law that an accused has a constitutional right to an impartial judge. *United States v. Butcher*, 56 M.J. 87, 90 (C.A.A.F. 2001). "The neutrality required by constitutional due process helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law. At the same time, it preserves both the appearance and reality of fairness, generating the feeling, so important to a popular government, that justice has been done, by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him." *Id.* (citations omitted).

12. Under R.C.M. 902(a), "[A] military judge shall disqualify himself or herself in any proceeding in which that military judge's impartiality might reasonably be questioned." This section was designed to effectuate an accused's constitutional right to an impartial decision-maker and to preserve public confidence in the military justice system. See *United States v. Wright*, 52 M.J. 136, 141 (C.A.A.F. 1999) ("The exhortation of the statute is designed to foster the appearance of justice within the judicial system."); *Butcher*, *supra* at 90 ("This section was enacted to maintain public confidence in the judicial system by avoiding even the appearance of partiality")(citations omitted).

13. An Investigating Officer is under the same obligations as a military judge to disqualify himself in cases where his impartiality might reasonably be questioned. "In determining impartiality, ... investigating officers, whose functions are judicial and quasi-judicial, are held to the same standards as military judges." *United States v. Merritt*, 2009 WL 1936628 at *2 (A.F.Ct.Crim.App.), *citing United States v. Collins*, 6 M.J. 256 (C.M.A.1979); *United States v. Cunningham*, 30 C.M.R. 402, 404 (C.M.A.1961)).

14. Notably, the test under R.C.M. 902(a) is not *actual* partiality, but the existence of a reasonable question about impartiality. R.C.M. 902 is not assessed in the mind of the military judge himself, but rather in the mind of a reasonable person who has knowledge of all the facts. *United States v. Martinez*, 19 M.J. 652, 654 (A.C.M.R. 1984) ("We note that the proper test ... is whether the charge of lack of impartiality is grounded on facts that would create a reasonable doubt concerning the judge's impartiality, not in the mind of the judge himself or even necessarily in the mind of the appellant, but rather in the mind of a reasonable man who has knowledge of all the facts") (internal citations and parentheticals omitted); *United States v. Kincheloe*, 14 MJ 40, 50 (C.M.A. 1982) ("Any conduct that would lead a reasonable man knowing all the circumstances to the conclusion that the judge's impartiality might reasonably be questioned" is a basis for the judge's disqualification.") *citing* E. Thode, REPORTER'S NOTES TO CODE OF JUDICIAL CONDUCT 60 (1973); *United States v. Foster*, 64 M.J. 331, 333 (C.A.A.F. 2007) ("the test is whether the military judge's actions would cause a reasonable person observing the trial to question the court-martial's legality, fairness, and impartiality.").

15. A reasonable observer with knowledge of all the facts in the instant case might reasonably question the Investigating Officer's impartiality in this case for the following reasons:

16. The Investigating Officer's Conflict of Interest: The Investigating Officer in this case is a career prosecutor for the Department of Justice. He has spent approximately 10 years prosecuting crimes on behalf of the United States government. To an outside observer, it appears questionable that an individual who has devoted much of his life to prosecuting criminals would now be able to "switch gears" and put on the hat of impartial arbiter.

17. The fact that the Department of Justice currently has an ongoing collateral criminal investigation in this case would also cause a reasonable person to question the impartiality of the Investigating Officer. The reasonableness of this belief is compounded by the fact that the Investigating Officer has determined that the defense's request for the Department of Justice's collateral investigation is "not reasonably available." Surely, to hold otherwise (i.e. to compel production of the document) would put the Investigating Officer in a delicate and unpleasant situation upon return to his position as a Department of Justice employee.

18. Clearly, there is a real conflict of interest in having a Department of Justice prosecutor preside over the instant case. A reasonable person viewing the proceedings from the outside would have serious questions about the impartiality of this Investigating Officer.

19. The Investigating Officer's Rulings on Defense Witnesses: The defense requested 48 witnesses. Ten of these witnesses were also requested by the government. Of the remaining 38 witnesses that were requested only by the defense, the Investigating Officer determined that only *two* would appear at the Article 32 hearing. In reality, one is not currently able to appear in person at the Article 32 hearing so the defense has agreed to allow that individual to testify telephonically. This means that only *one* defense witness (out of 38) will appear at the Article 32 in person. In effect, the Investigating Officer's ruling means that virtually all of the witnesses testifying will be government witnesses.

20. This case is said to involve the largest military leak of documents in United States history. The government has charged PFC Manning with 22 specifications, carrying a maximum punishment of life in prison without the possibility of parole. It defies logic that, in a case such as this, the Investigating Officer would limit the defense's ability to call the overwhelming majority of its witnesses.

21. Anecdotally, the defense observes that it has been able to call more witnesses in Article 32 hearings involving simple assault or minor drug possession. Here, where the accused risks spending life in prison, it is beyond the realm of comprehension that the defense would only be permitted to examine one witness in person.

22. The Investigating Officer's ruling on the defense witness request would cause a reasonable observer to believe that the playing ground is not fair. While the government is able to call virtually everyone it wants, the defense must proceed with its hands tied behind its back. Such a one-sided ruling – whether motivated by actual bias or not – creates the reasonable perception that the Investigating Officer is not impartial.

23. The Investigating Officer's Ruling On the Defense's Closure Motion: On 28 November 2011, the defense filed a motion requesting the Investigating Officer to close the hearing during instances in which the government intended to elicit particular instances of alleged uncharged misconduct. The defense noted that the evidence is unreliable, likely inadmissible in an actual court-martial, and highly prejudicial to the accused. The defense argued that to allow the evidence to be adduced in an open forum would prejudice PFC Manning's right to a fair trial, as it would put a military judge in a position where he would have to "un-ring a bell."

24. The Investigating Officer agreed that "[T]here is a substantial probability that an overriding interest will be prejudiced if proceedings remain open." He also agreed that the defense's request was narrowly tailored. However, the Investigating Officer was of the view that options short of closure could remedy any potential prejudice of panel members. In this respect, he stated:

I find that this part of the test is not met because, should this case be referred to trial, a military judge will have the ability to take appropriate protective measures. For example, a military judge can ensure that thorough *voir dire* is conducted of prospective panel members. This would address the defense's concern that "if ... [this] information is disclosed to the public prior to trial, it will have a detrimental impact on PFC Manning's ability to obtain a fair and impartial trial because prospective panel members hearing the information are likely to form an opinion regarding PFC Manning based upon this information." Defense 28 November 2011 request, para. 10. Thorough *voir dire* would also address the defense's concern as to the military judge and the defense having to "un-ring a bell with the members" because it would cover any issues as to whether the public disclosure of this information affected prospective panel members' ability to sit on the panel. In this regard, I note that R.C.M. 912(f)(1)(M) and (N) state that "[a] member shall be excused for cause whenever it appears that the member ... [h]as informed or expressed a definite opinion as to the guilt or innocence of the accused as to any offense charged ... [or] [s]hould not sit as a member in the interest of having the court-martial free from substantial doubt as to legality, fairness, and impartiality." The discussion to R.C.M. 912(f)(1) notes that "grounds for challenge under subsection (N) ... [include] that the member: ... has a decidedly ... hostile attitude toward a party". The grounds for granting a challenge for cause would thus ensure that, as the defense has stated, "PFC Manning is entitled to a trial before an unbiased panel that has no preconceived opinions about him." Defense 28 November 2011 request, para. 10. Finally, if this case were referred to trial a military judge will have the ability to issue rulings and instructions necessary to ensure that the trial is not affected by the disclosure of this information at the Article 32 investigation.

25. The Investigating Officer appears to have overlooked the severity of the charges in this case. PFC Manning has already been subjected to extensive media scrutiny in this case. He has been referred to as a "traitor" who has "blood on his hands." Government officials have even called for his execution. And all this was *prior* to PFC Manning even having a preliminary

hearing. That the Investigating Officer claims that *voir dire* and an instruction can “cure” the prejudice occasioned by the public disclosure of this information is further evidence of his bias.

26. In its Sealed Defense Response to Government’s 405(h)(3) filing, the defense pointed out that in all of the cases cited by the government in support of its motion to keep the hearing open, it was ***the government that was seeking closure*** over defense objection. Here, the defense is in the rare position of seeking closure to protect the accused’s right to a fair trial. The government’s rebuttal was, in essence, that the public had a “right to know” this information. Incidentally, it is ironic that the government has championed the public’s “right to know” in a case where the government’s position on the merits is that the public did ***not*** have a right to know. Based on his ruling, the Investigating Officer appears to have agreed that the public’s “right to know” this evidence – evidence that likely will be ruled inadmissible under M.R.E. 404(b) or 403 – overrides the accused’s right to a fair trial.

27. The defense requested that the Investigating Officer reconsider his ruling. In so doing, the defense reminded the Investigating Officer that “[t]his case has already been subjected to extensive media scrutiny and PFC Manning has already been adjudged guilty in the court of public opinion. Moreover, several high-ranking officials (both military and government) have made improper comments concerning PFC Manning’s probable guilt and appropriate punishment. In a case such as this, there is no substitute for ensuring that potentially inadmissible and highly inflammatory evidence is not placed into the public realm.” The Investigating Officer was of the view that any prejudice caused by such statements could also be remedied through *voir dire* and instructions:

Additionally, with respect to the defense’s reference to “high-ranking officials ... hav[ing] made improper comments concerning PFC Manning’s probable guilt and appropriate punishment,” in Mr. Coombs’s 131621 December 2011 email, I find that thorough *voir dire* and appropriate rulings and instructions by the military judge will adequately address the risk of unlawful command influence.

28. Apparently, the Investigating Officer is comfortable piling prejudice on top of prejudice – so long as a military judge deals with the issue through *voir dire* or an instruction down the road. It is incomprehensible that the Investigating Officer’s solution is to allow what he and the government concede will be negative fallout for the accused with a view to cleaning up the mess later on.

29. The defense motion requesting limited closure was, in colloquial terms, a “no-brainer.” No prejudice can come of ruling in favor of the defense. Nor can any prejudice come to the government in ruling in favor of the defense. The only prejudice that can (and undoubtedly will) result is in the Investigating Officer ruling against the defense. The defense maintains that the government would like the media to hear the evidence precisely ***in order to cause the very prejudice*** which they then say can be “fixed” through *voir dire* or a limiting instruction. Such a position is absurd and the ruling of the Investigating Officer in this respect would cause a reasonable observer to question his impartiality.

30. Although baffled by the Investigating Officer's determination on its closure motion, the defense then requested that the Investigating Officer exclude the media from limited portions of the Article 32 hearing and issue a gag order for those non-media spectators who remained in the court room. Such a solution would not be considered "closure" under R.C.M. 806 and thus, would not be subject to the four-part test that the defense maintains the Investigating Officer incorrectly applied. The Investigating Officer refused to do so and would not provide a justification for this ruling other than to cross-reference his previous ruling on the closure motion.

31. On 14 December 2011, the defense asked the Investigating Officer to reconsider his ruling on the closure motion and on the defense's alternative request to exclude media from the courtroom during the portions of the hearing in which the instances of alleged uncharged misconduct were referenced. The Investigating Officer indicated that he would take the requests under advisement. On 15 December 2011, the Investigating Officer denied the defense's request. The Investigating Officer did not provide any justification for these rulings.

32. The Investigating Officer's Ruling on Government Witnesses' Unsworn Statements: On 8 December 2011, the defense filed a Request to Compel Production of Witnesses, including six Original Classification Authorities (OCAs).

33. The government opposed the request and instead sought to adduce unsworn statements from the six OCAs in lieu of sworn statements under R.C.M. 405(g)(4)(B). The section provides that:

The investigating officer may consider, over objection of the defense, when the witness is not reasonably available:

- i) Sworn statements;
- ii) Statements under oath taken by telephone, radio, or similar means providing each party the opportunity to question the witness ...
- iii) Prior testimony under oath; and
- iv) Deposition of that witness; and
- v) In time of war, unsworn statements.

34. The government maintains the OCAs' unsworn statements are, in effect, sworn statements. The government's argument in its entirety is as follows:

The United States objects to your consideration of Article 131, Perjury, as a reference in determining whether a statement is properly sworn. Article 131 is a punitive article intended to criminalize sworn statements by Servicemembers during a judicial proceeding. The original classification authority (OCA) reviews are simply sworn statements made "under penalty of perjury" IAW 28 U.S.C. 1746. Rather than Article 131, the United States recommends you consider Article 134, False Swearing, and specifically the portion under the explanation which states, "[i]t does not include such statements made in a judicial proceeding or course of justice, as these are under Article 131, perjury...." See MCM, part IV, paragraph 79c(1). Under the defense's

proposed analysis, the only sworn statements that you could consider during this investigation, are previously sworn statements given under oath at an Article 32 investigation or court-martial. [Email from CPT Fein, 8 December 2011].

35. The defense asserts that the language of R.C.M. 405(g)(4)(B) is crystal clear – the Investigating Officer may consider only “sworn statements” and not unsworn statements signed under penalty of perjury. In an effort to convince the Investigating Officer to apply the plain meaning of the statute, the defense pointed to Article 131 in order to show that the drafters of the Manual for Courts Martial were aware of 28 U.S.C. 1746 and chose not to incorporate that section into R.C.M. 405(g)(4)(B). Had the drafters intended unsworn statements under R.C.M. 405(g)(4)(B) to be admissible, they could have easily enumerated that exception under the section.

36. On 12 December 2011, the Investigating Officer, the government and the defense conducted a telephonic 802 conference. One of the issues discussed was whether the unsworn statements could be admitted in lieu of sworn statements. The Investigating Officer *sua sponte* provided the parties with two cases that he believed supported the proposition the government was advancing. In other words, the Investigating Officer did the government’s work for it. Notably, the Investigating Officer was investigating how to adduce the government’s evidence *before* ruling on the defense’s motion to compel production of witnesses. The Investigating Officer was looking for ways to admit the statements because he had already predetermined that the OCAs would not be called to testify in person.

37. By response email on 12 December 2011, the defense objected to the Investigating Officer’s reading of the two cases it was relying on:

In response to your request for us to look at 2010 WL 2265833 and 2002 WL 243445, the defense’s position is that both cases are inapplicable to the situation at hand. In *Faison*, the IO found that TRD was unavailable and that her videotaped statement was sworn. Such a determination was appropriate given the fact TRD responded to questions indicating that she knew the difference between the truth and a lie and promised to tell the truth. As the IO and the AFCCA correctly concluded, this colloquy more than adequately satisfied the oath/affirmation requirement so as to make TRD’s videotaped statement a sworn statement under R.C.M. 405(g)(4)(B)(i). In the instant case, unsworn statements under 28 U.S.C. § 1746 do not share any of the same hallmarks of a sworn statement. The statements are not made in front of anyone and the statements are not similar, in that they are not made in front of a person authorized to administer oaths.

Likewise, *Elsevier* dealt with a videotaped interview that was done without a formal swearing or oath. However, it qualified as a sworn statement in accordance with R.C.M. 405(g)(4)(B)(i) since on a later date the unavailable witness did swear to the truth of the statements contained therein. The IO correctly found this to be a sworn adoption of the videotaped interviews that, pursuant to *United States v. Wood*, 36 M.J. 651 (A.C.M.R. 1992), rendered it admissible. None of the individuals who provided the unsworn statements under 28 U.S.C. § 1746 have subsequently provided a sworn adoption of their unsworn statement in accordance with R.C.M. 405(g)(4)(B)(i).

An unsworn statement provided under 28 U.S.C. § 1746 does not qualify as a sworn statement. In order for an unsworn statement provided under 28 U.S.C. § 1746 to be admissible, it must be subscribed and signed "in a judicial proceeding or course of justice" at the Article 32 hearing. A plain reading of 28 U.S.C Section 1746 and R.C.M. 405(h)(1)(A) undercuts any argument to the contrary. [Email from defense to Investigating Officer, 12 December 2011].

38. The government's one line response was, "The United States maintains its previously stated position on ... the validity of the sworn statements." [Email from CPT Fein to Investigating Officer, 12 December 2011]. The Investigating Officer did not ask the government to respond specifically to the defense's argument or to advance its own interpretation of the cases.

39. On 14 December 2011, the Investigating Officer ruled in favor of the prosecution, but not before taking it upon himself again to do the government's research. In support of its ruling, the Investigating Officer produced three new cases that he believes supports the proposition the government is advancing. Only one of these is a military case; two are federal appellate cases. The defense maintains that none of the cases offers support for the proposition that an unsworn statement under 28 U.S.C. § 1746 can be converted into a sworn statement under R.C.M. 405(g)(4)(B). In fact, the only military case cited by the Investigating Officer, *United States v. Gunderman*, 67 M.J. 683 (C.A.A.F. 2009) appears to lend more support to the defense's position than that of the government/Investigating Officer. The Army Court of Criminal Appeals in *Gunderman* emphasizes that, "To be admissible before this court, factual assertions must be ... admitted in a proper form Indeed, our own internal rules reflect this requirement for some form of solemnity." *Id.* At 686-7. The court continued, "By reaffirming this requirement, we do not exalt form over substance ... However, assertions of *fact* ... must either be contained in the record or be offered in an admissible form." *Id.* At 688. In short, *Gunderman* establishes that form is important and evidence proffered by either party must be "in an admissible form."

40. In making his ruling, the Investigating Officer stated, "I also note that the classification review statements at issue all indicate that they are in the 'course of justice' as they all indicate the persons making the statements knew they were being prepared for use in this case. As such, I consider these statements to have the same indicia of reliability as sworn statements." [Email from Investigating Officer, 14 December 2011]. The last line of the Investigating Officer's ruling clearly reveals that he has not deemed an unsworn statement made under penalty of perjury to be equivalent to a "sworn statement" under 405(g)(4)(B). Rather, he has determined that an unsworn statement should be admissible because it carries with it "the same indicia of reliability as sworn statements." *Id.* The Investigating Officer has fabricated a new ground upon which to admit statements under 405(g)(4)(B) – that the statement carries "the same indicia of reliability as sworn statements." The Investigating Officer, after bending over backwards to make the government's case for it, has now read into 405(g)(4)(B) a new ground for the admissibility of unsworn statements. This is not permitted under military law. See *United States v. Ware*, 1 M.J. 282, 285 (CMA 1976) ("(T)he rule is well settled that a plain and unambiguous statute is to be applied, not interpreted. Where no ambiguity is apparent there is no reason to resort to rules of statutory construction, which are intended solely to remove not create doubt.").

41. In short, despite a clear statement in R.C.M. 405(g)(4)(B) that the Investigating Officer admit only "sworn statements," the Investigating Officer: a) did extensive research on the issue on behalf of the government; b) provided the defense with five cases to support the government's position; c) read in a new ground for admissibility into R.C.M. 405(g)(4)(B); and d) proceeded to rule in favor of the prosecution. It strains credulity to believe that the Investigating Officer was acting as an impartial neutral when he actively engaged in extensive research to support the government's position (without requiring that the government do this research itself) and proceeded to create a new ground for the admissibility of statements at the Article 32 hearing. The Investigating Officer has never once produced a case that supported the defense.

42. The Investigating Officer's conduct in this case is similar to that of the military judge in *United States v. George*, 40 M.J. 540 (A.C.M.R. 1994). Like the Investigating Officer in this case, the military judge in *George* was "a reserve officer who was normally employed as a civilian prosecutor." *Id.* at 543. The Army Court of Military Review noted that "[a]s a civilian prosecutor who was on active duty for a short period of time for duty as a military judge, it was important for him to ensure that his conduct at trial enhanced both the appearance and actuality of impartiality and fairness of the military justice system." *Id.* In particular, the court in *George* held that "[t]he military judge improperly limited the number of witnesses [for the defense]." *Id.* at 544. The court also expressed concern over the "military judge assisting the trial counsel to try his case, and aiding him in making the foundation for these evidentiary issues." *Id.* (internal citations omitted). Finally, the military judge "made many rulings that revealed his advocacy for the prosecution" such that he abandoned his role as an impartial arbiter and "became an advocate for the prosecution." *Id.* In the instant case, it similarly appears that the Investigating Officer has abandoned his role as a third-party neutral and instead has become an instrument of the prosecution.

43. Based on:

- a) his civilian role in the Department of Justice and the ongoing Department of Justice criminal investigation;
- b) his ruling that the defense could only examine 2 of its 38 requested witnesses;
- c) his determination that the public's "right to know" supersedes PFC Manning's right to a fair trial;
- d) his extensive research for the government, following by a favorable ruling for the prosecution;

there is a reasonable question about the Investigating Officer's impartiality in the instant case. A reasonable observer, familiar with the facts and circumstances surrounding this case, would conclude that the "decks are stacked" against the defense and that the Investigating Officer should recuse himself in order to preserve the integrity of the military justice process.

CONCLUSION

44. Based on the above, the defense requests that the Investigating Officer recuse himself in the above-titled matter under R.C.M. 902.

DAVID EDWARD COOMBS
Civilian Defense Counsel

Attachment N

12 January 2012

MEMORANDUM THRU Staff Judge Advocate, U.S. Army Military District of Washington,
210 A. Street, Fort Lesley J. McNair, DC 20319-5013

FOR Commander, U.S. Army Garrison, Joint Base Myer – Henderson Hall, 204 Lee Avenue,
Fort Myer, VA 22211-1199

SUBJECT: Request for Oral Depositions – United States v. PFC Bradley Manning

1. The defense, pursuant to Rule for Courts-Martial (R.C.M.) 702 requests that an oral deposition of the below listed individuals be conducted prior to trial. *United States v. Chuculate*, 5 M.J. 143 (C.M.A. 1978); *United States v. Chestnut*, 2 M.J. 84 (C.M.A. 1976).

2. In accordance with the requirements of R.C.M. 702(c)(2), defense provides the following information:

- a. CPT James Kolky, 1st Cavalry Division, Fort Hood, Texas, Brigade S-2, (254) 285-5093, james.koky@conus.army.mil. He will testify about his classification review of the three Apache gun videos that were sent to his Division by FORSCOM. Specifically, he will testify that the videos were not classified at the time of their alleged release. However, he will testify that he believes that videos should have been classified. He will also testify regarding his classification determination. The requested deposition is needed due to the Article 32 Investigating Officer's improper determination that CPT Kolky was not reasonably available at the Article 32 hearing. CPT Kolky was an essential witness and should have been produced in person at the Article 32 hearing. Additionally, given the fact CPT Kolky believes the matter that the defense wishes to discuss with him is classified, the government needs to arrange for a proper location for the deposition. The defense requests that an oral deposition be conducted.
- b. RADM Kevin M. Donegan, Director of Operations for United States Central Command, 7115 South Boundary Boulevard, MacDill Air Force Base, Florida 33621, (312) 651-4134, kevin.donegan@centcom.mil. RADM Donegan conducted classification reviews on two PowerPoint slide presentations of official reports originated by USCENTCOM. The PowerPoint presentations are the subject of Specification 10 of Charge II. RADM Donegan will testify regarding his classification determination and his belief of the impact on national security due to the release of the information. The requested deposition is needed due to the Article 32 Investigating Officer's improper determination that RADM Donegan was not reasonably available at the Article 32 hearing. RADM Donegan was an essential witness and should have been produced in person at the Article 32 hearing. Additionally, given the classified nature of his testimony, the government needs to arrange for a proper location for the deposition. The defense requests that an oral deposition be conducted.

SUBJECT: Request for Oral Depositions – United States v. PFC Bradley Manning


- c. Robert E. Betz, USCYBERCOM Chief Classification Advisory Officer, the government has not provided the defense with contact information for Mr. Betz. Mr. Betz will testify about his classification determination concerning the alleged chat logs between Mr. Lamo and PFC Bradley Manning. Specifically, he will testify about his classification assessment of information discussed in the alleged chat logs. The requested deposition is needed due to the Article 32 Investigating Officer's improper determination that Mr. Betz was not reasonably available at the Article 32 hearing. Mr. Betz was an essential witness and should have been produced in person at the Article 32 hearing. Additionally, given the classified nature of his testimony, the government needs to arrange for a proper location for the deposition. The defense requests that an oral deposition be conducted.
- d. LtGen Robert F. Schmidle, Jr., Deputy Commander U.S. Cyber Command, (703) 614-3663, robert.schmidle@usmc.mil. LtGen Schmidle, is the Original Classification Authority (OCA) over the information discussed by Mr. Betz. LtGen Schmidle will testify that he concurs with the classification determination and impact statements made by Mr. Betz. The defense would like to question him regarding his declaration and the basis for his belief. The requested deposition is needed due to the Article 32 Investigating Officer's improper determination that LtGen Schmidle was not reasonably available at the Article 32 hearing. LtGen Schmidle was an essential witness and should have been produced in person at the Article 32 hearing. Additionally, given the classified nature of his testimony, the government needs to arrange for a proper location for the deposition. The defense requests that an oral deposition be conducted.
- e. VADM Robert S. Harward, USCENTCOM, Deputy Commander, MacDill Air Force Base, Florida 33621, (813) 840-5104, robert.harward@jcom.mil. VADM Harward will testify concerning his classification review and classification determination concerning the CIDNE Afghanistan Events, CIDNE Iraq Events, other briefings and the BE22 PAX.wmv video. Specifically, VADM Harward will testify concerning his classification determination and his belief of the impact on national security from having this information released to the public. The requested deposition is needed due to the Article 32 Investigating Officer's improper determination that VADM Harward was not reasonably available at the Article 32 hearing. VADM Harward was an essential witness and should have been produced in person at the Article 32 hearing. Additionally, given the classified nature of his testimony, the government needs to arrange for a proper location for the deposition. The defense requests that an oral deposition be conducted.
- f. Patrick F. Kennedy, Under Secretary of State for Management, (202) 647-7000. Mr. Kennedy will testify concerning his review of the disclosure of Department of State Diplomatic Cables stored within the Net-Centric Diplomacy server and part of SIPDIS. Mr. Kennedy will testify concerning his classification determination and the impact of the release of the information on national security. The requested deposition is needed due to the Article 32 Investigating Officer's improper determination that Mr. Kennedy was not reasonably available at the Article 32 hearing. Mr. Kennedy was an essential witness and should have been produced in person at the Article 32 hearing. Additionally, given the

SUBJECT: Request for Oral Depositions – United States v. PFC Bradley Manning

classified nature of his testimony, the government needs to arrange for a proper location for the deposition. The defense requests that an oral deposition be conducted.

3. In accordance with R.C.M. 702(c)(3)(C) the defense requests that the government promptly inform the defense of the action on the request. If the request is denied, the defense requests that the government comply with the rule by providing the reasons for the denial so that a motion to compel can be properly filed with the military judge.

4. The point of contact for this memorandum is the undersigned at (401) 744-3007 or by e-mail at coombs@armycourtartialdefense.com.



DAVID EDWARD COOMBS
Civilian Defense Counsel

Attachment O

16 January 2012

MEMORANDUM THRU Staff Judge Advocate, U.S. Army Military District of Washington,
210 A. Street, Fort Lesley J. McNair, DC 20319-5013

FOR Commander, U.S. Army Garrison, Joint Base Myer - Henderson Hall, 204 Lee Avenue,
Fort Myer, VA 22211-1199

SUBJECT: Request for Oral Depositions - United States v. PFC Bradley Manning

1. The defense, pursuant to Rule for Courts-Martial (R.C.M.) 702 requests that an oral deposition of the below listed individuals be conducted prior to trial. *United States v. Chuculate*, 5 M.J. 143 (C.M.A. 1978); *United States v. Chestnut*, 2 M.J. 84 (C.M.A. 1976).

2. In accordance with the requirements of R.C.M. 702(c)(2), defense provides the following information:

- a. RADM David B. Woods, Commander, Joint Task Force - Guantanamo (JTF-GTMO). (703) 697-3650, david.b.woods@navy.mil. RADM Woods will testify concerning his review of the disclosure of five documents, totaling twenty-two pages. RADM Woods will testify concerning his classification determination and his belief regarding the impact of the release of the information on national security. The requested deposition is needed due to the Article 32 Investigating Officer's improper determination that Mr. Woods was not reasonably available at the Article 32 hearing. Mr. Woods was an essential witness and should have been produced in person at the Article 32 hearing. Additionally, given the classified nature of his testimony, the government needs to arrange for a proper location for the deposition. The defense requests that an oral deposition be conducted.
- b. Mr. Robert Roland, the government has not provided contact information for Mr. Roland. Mr. Roland will testify concerning his review of two memoranda produced by a United States government intelligence agency. Mr. Roland will testify concerning his classification determination and his belief regarding the impact of the release of the information on national security. The requested deposition is needed due to the Mr. Roland not being produced by the government at the Article 32 hearing. Mr. Roland was an essential witness and should have been produced in person at the Article 32 hearing. Additionally, given the classified nature of his testimony, the government needs to arrange for a proper location for the deposition. The defense requests that an oral deposition be conducted.
- c. Former Secretary Robert Gates, Chancellor, College of William and Mary, P.O. Box 8795, Williamsburg, VA 23187, (757) 221-1693. Former Secretary Gates will testify that the Afghanistan and Iraq SIGACT releases did not reveal any sensitive intelligence sources or methods. He will also testify that the Department of Defense could not point to anyone in Afghanistan or Iraq who was harmed due to the documents released by


SUBJECT: Request for Oral Depositions – United States v. PFC Bradley Manning

WikiLeaks. He will testify that the Afghanistan and Iraq SIGACTs are simply ground-level field reports that document dated activities which do not disclose sensitive information or our sources and methods. Former Secretary Gates will also testify that the initial public descriptions of the harm to foreign policy due to the publication of diplomatic cables were “fairly significantly overwrought.” He will also testify that although the disclosures were embarrassing and awkward, they did not represent significant consequences to foreign policy. Finally, Former Secretary Gates will testify that on 29 July 2010, he directed the Defense Intelligence Agency (DIA) to lead a comprehensive review of the documents allegedly given to WikiLeaks and to coordinate under the Information Review Task Force (IRTF, formerly TF 725) to conduct a complete damage review. He will testify that the damage review confirmed that the alleged leaks represented a low to, at best, moderate risk to national security. Specifically, he will testify that all of the information allegedly leaked was either dated, represented low-level opinions, or was already commonly understood and known due to previous public disclosures. The requested deposition is needed due to the Article 32 Investigating Officer’s improper determination that Former Secretary Gates was not reasonably available at the Article 32 hearing. Former Secretary Gates was an essential witness and should have been produced in person at the Article 32 hearing.

- d. Secretary Hillary R. Clinton, U.S. Department of State, 2201 C Street NW, Washington, D.C. 20520, (202) 647-4000. Secretary Clinton will testify that she has raised the issue of the disclosure of diplomatic cables with foreign leaders “in order to assure our colleagues that it will not in any way interfere with American diplomacy or our commitment to continuing important work that is ongoing.” Secretary Clinton will also testify that she has not had any concerns expressed to her about whether any nation would continue to work with the United States or would continue to discuss important matters going forward due to the alleged leaks. As such, Secretary Clinton will testify that although the leaks were embarrassing for the administration, she concurs with Former Secretary Gates’ opinion that they did not represent significant consequences to foreign policy. The requested deposition is needed due to the Article 32 Investigating Officer’s improper determination that Secretary Clinton was not reasonably available at the Article 32 hearing. Secretary Clinton was an essential witness and should have been produced in person at the Article 32 hearing.

3. In accordance with R.C.M. 702(c)(3)(C) the defense requests that the government promptly inform the defense of the action on the request. If the request is denied, the defense requests that the government comply with the rule by providing the reasons for the denial so that a motion to compel can be properly filed with the military judge.

4. The point of contact for this memorandum is the undersigned at (401) 744-3007 or by e-mail at coombs@armycourtmarshaldefense.com.


DAVID EDWARD COOMBS
Civilian Defense Counsel

Attachment P



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
JOINT BASE MYER-HENDERSON HALL
204 LEE AVENUE
FORT MYER, VIRGINIA 22211-1199

IMND-MHH-ZA

18 JAN 12

MEMORANDUM FOR Mr. David Edward Coombs, Civilian Defense Counsel

SUBJECT: Response to Requests for Oral Depositions – U.S. v. PFC Bradley Manning

1. On 12 January 2012 and 16 January 2012, the defense requested oral depositions of CPT James Kolky, RADM Kevin Donegan, Mr. Robert Betz, LtGen Robert Schmidle, Jr., VADM Robert Harward, Under Secretary of State Patrick Kennedy, RADM David Woods, Dr. Robert Gates, and Secretary of State Hillary Clinton, alleging that these witnesses were essential to the Article 32 hearing and that the Article 32 investigating officer's (IO) determination that these witnesses were not reasonably available was improper. The defense also requested an oral deposition of Mr. Robert Roland, stating that he was an essential witness, and the government should have produced him at the Article 32 hearing.

2. The requests for CPT Kolky, RADM Donegan, Mr. Betz, LtGen Schmidle, VADM Harward, Under Secretary Kennedy, and RADM Woods are:

() approved. Pursuant to RCM 702(d), the trial counsel will coordinate with the appropriate deposition officer(s) for the oral depositions. Unless an extension is approved by me, the depositions shall occur no later than thirty days from the date of this memorandum.

(No) disapproved. Pursuant to RCM 703(c)(3)(A), I find there is good cause to deny these deposition requests. The IO determined that the difficulty, expense, and/or effect on military operations outweighed the significance of the expected testimony of CPT Kolky, RADM Donegan, Mr. Betz, LtGen Schmidle, VADM Harward, Under Secretary Kennedy, and RADM Woods. There is no evidence that the witnesses will not be available at trial if their testimony is determined relevant and necessary, nor is there evidence that the IO's determinations were improper.

3. The requests for Dr. Gates and Secretary Clinton are:

() approved. Pursuant to RCM 702(d), the trial counsel will coordinate with the appropriate deposition officer(s) for the oral depositions. Unless an extension is approved by me, the depositions shall occur no later than thirty days from the date of this memorandum.

(No) disapproved. Pursuant to RCM 703(c)(3)(A), I find there is good cause to deny these deposition requests. The IO determined that the expected testimony of Dr. Gates and Secretary Clinton were not relevant to the Article 32 investigation. There is no evidence that the witnesses will not be available at trial if their testimony is determined relevant and necessary, nor is there evidence that the denial of the witness requests was improper.

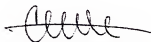
IMND-MHH-ZA

SUBJECT: Response to Requests for Oral Depositions – U.S. v. PFC Bradley Manning

4. The request for Mr. Roland is:

() approved. Pursuant to RCM 702(d), the trial counsel will coordinate with the appropriate deposition officer for the oral deposition. Unless an extension is approved by me, the deposition shall occur no later than thirty days from the date of this memorandum.

(*ll*) disapproved. Pursuant to RCM 703(c)(3)(A), I find there is good cause to deny this deposition request. The defense did not request Mr. Roland as an Article 32 witness. There is no evidence that the witnesses will not be available at trial if their testimony is determined relevant and necessary.


CARL R. COFFMAN, JR.
COL, AV
Commanding

CF:

1-Trial Counsel

1-Defense Counsel

Attachment Q

23 January 2012

MEMORANDUM THRU Staff Judge Advocate, U.S. Army Military District of Washington,
210 A. Street, Fort Lesley J. McNair, DC 20319-5013

FOR Commander, U.S. Army Military District of Washington, 210 A. Street, Fort Lesley J.
McNair, DC 20319-5058

SUBJECT: Request for Oral Depositions – United States v. PFC Bradley Manning

1. The defense, pursuant to Rule for Courts-Martial (R.C.M.) 702 requests that an oral deposition of the below listed individuals be conducted prior to trial. *United States v. Chuculate*, 5 M.J. 143 (C.M.A. 1978); *United States v. Chestnut*, 2 M.J. 84 (C.M.A. 1976).

2. In accordance with the requirements of R.C.M. 702(c)(2), defense provides the following information:

- a. CPT James Kolky, 1st Cavalry Division, Fort Hood, Texas, Brigade S-2, (254) 285-5093. james.koky@conus.army.mil. He will testify about his classification review of the three Apache gun videos that were sent to his Division by FORSCOM. Specifically, he will testify that the videos were not classified at the time of their alleged release. However, he will testify that he believes that videos should have been classified. He will also testify regarding his classification determination. The requested deposition is needed due to the Article 32 Investigating Officer's improper determination that CPT Kolky was not reasonably available at the Article 32 hearing. CPT Kolky was an essential witness and should have been produced in person at the Article 32 hearing. Additionally, given the fact CPT Kolky believes the matter that the defense wishes to discuss with him is classified, the government needs to arrange for a proper location for the deposition. The defense requests that an oral deposition be conducted.
- b. RADM Kevin M. Donegan, Director of Operations for United States Central Command, 7115 South Boundary Boulevard, MacDill Air Force Base, Florida 33621, (312) 651-4134. kevin.donegan@centcom.mil. RADM Donegan conducted classification reviews on two PowerPoint slide presentations of official reports originated by USCENTCOM. The PowerPoint presentations are the subject of Specification 10 of Charge II. RADM Donegan will testify regarding his classification determination and his belief of the impact on national security due to the release of the information. The requested deposition is needed due to the Article 32 Investigating Officer's improper determination that RADM Donegan was not reasonably available at the Article 32 hearing. RADM Donegan was an essential witness and should have been produced in person at the Article 32 hearing. Additionally, given the classified nature of his testimony, the government needs to arrange for a proper location for the deposition. The defense requests that an oral deposition be conducted.

SUBJECT: Request for Oral Depositions – United States v. PFC Bradley Manning

- c. Robert E. Betz, USCYBERCOM Chief Classification Advisory Officer, the government has not provided the defense with contact information for Mr. Betz. Mr. Betz will testify about his classification determination concerning the alleged chat logs between Mr. Lamo and PFC Bradley Manning. Specifically, he will testify about his classification assessment of information discussed in the alleged chat logs. The requested deposition is needed due to the Article 32 Investigating Officer's improper determination that Mr. Betz was not reasonably available at the Article 32 hearing. Mr. Betz was an essential witness and should have been produced in person at the Article 32 hearing. Additionally, given the classified nature of his testimony, the government needs to arrange for a proper location for the deposition. The defense requests that an oral deposition be conducted.
- d. LtGen Robert E. Schmidle, Jr., Deputy Commander U.S. Cyber Command, (703) 614-3663, robert.schmidle@usmc.mil. LtGen Schmidle, is the Original Classification Authority (OCA) over the information discussed by Mr. Betz. LtGen Schmidle will testify that he concurs with the classification determination and impact statements made by Mr. Betz. The defense would like to question him regarding his declaration and the basis for his belief. The requested deposition is needed due to the Article 32 Investigating Officer's improper determination that LtGen Schmidle was not reasonably available at the Article 32 hearing. LtGen Schmidle was an essential witness and should have been produced in person at the Article 32 hearing. Additionally, given the classified nature of his testimony, the government needs to arrange for a proper location for the deposition. The defense requests that an oral deposition be conducted.
- e. VADM Robert S. Harward, USCENTCOM, Deputy Commander, MacDill Air Force Base, Florida 33621, (813) 840-5104, robert.harward@jfc.com.mil. VADM Harward will testify concerning his classification review and classification determination concerning the CIDNE Afghanistan Events, CIDNE Iraq Events, other briefings and the BE22 PAX.wmv video. Specifically, VADM Harward will testify concerning his classification determination and his belief of the impact on national security from having this information released to the public. The requested deposition is needed due to the Article 32 Investigating Officer's improper determination that VADM Harward was not reasonably available at the Article 32 hearing. VADM Harward was an essential witness and should have been produced in person at the Article 32 hearing. Additionally, given the classified nature of his testimony, the government needs to arrange for a proper location for the deposition. The defense requests that an oral deposition be conducted.
- f. Patrick F. Kennedy, Under Secretary of State for Management, (202) 647-7000. Mr. Kennedy will testify concerning his review of the disclosure of Department of State Diplomatic Cables stored within the Net-Centric Diplomacy server and part of SIPDIS. Mr. Kennedy will testify concerning his classification determination and the impact of the release of the information on national security. The requested deposition is needed due to the Article 32 Investigating Officer's improper determination that Mr. Kennedy was not reasonably available at the Article 32 hearing. Mr. Kennedy was an essential witness and should have been produced in person at the Article 32 hearing. Additionally, given the

SUBJECT: Request for Oral Depositions – United States v. PFC Bradley Manning

classified nature of his testimony, the government needs to arrange for a proper location for the deposition. The defense requests that an oral deposition be conducted.

- g. RADM David B. Woods, Commander, Joint Task Force – Guantanamo (JTF-GTMO). (703) 697-3650, david.b.woods@navy.mil. RADM Woods will testify concerning his review of the disclosure of five documents, totaling twenty-two pages. RADM Woods will testify concerning his classification determination and his belief regarding the impact of the release of the information on national security. The requested deposition is needed due to the Article 32 Investigating Officer's improper determination that Mr. Woods was not reasonably available at the Article 32 hearing. Mr. Woods was an essential witness and should have been produced in person at the Article 32 hearing. Additionally, given the classified nature of his testimony, the government needs to arrange for a proper location for the deposition. The defense requests that an oral deposition be conducted.
- h. Mr. Robert Roland, the government has not provided contact information for Mr. Roland. Mr. Roland will testify concerning his review of two memoranda produced by a United States government intelligence agency. Mr. Roland will testify concerning his classification determination and his belief regarding the impact of the release of the information on national security. The requested deposition is needed due to the Mr. Roland not being produced by the government at the Article 32 hearing. Mr. Roland was an essential witness and should have been produced in person at the Article 32 hearing. Additionally, given the classified nature of his testimony, the government needs to arrange for a proper location for the deposition. The defense requests that an oral deposition be conducted.
- i. Former Secretary Robert Gates, Chancellor. College of William and Mary, P.O. Box 8795, Williamsburg, VA 23187, (757) 221-1693. Former Secretary Gates will testify that the Afghanistan and Iraq SIGACT releases did not reveal any sensitive intelligence sources or methods. He will also testify that the Department of Defense could not point to anyone in Afghanistan or Iraq who was harmed due to the documents released by WikiLeaks. He will testify that the Afghanistan and Iraq SIGACTs are simply ground-level field reports that document dated activities which do not disclose sensitive information or our sources and methods. Former Secretary Gates will also testify that the initial public descriptions of the harm to foreign policy due to the publication of diplomatic cables were "fairly significantly overwrought." He will also testify that although the disclosures were embarrassing and awkward, they did not represent significant consequences to foreign policy. Finally, Former Secretary Gates will testify that on 29 July 2010, he directed the Defense Intelligence Agency (DIA) to lead a comprehensive review of the documents allegedly given to WikiLeaks and to coordinate under the Information Review Task Force (IRTF, formerly TF 725) to conduct a complete damage review. He will testify that the damage review confirmed that the alleged leaks represented a low to, at best, moderate risk to national security. Specifically, he will testify that all of the information allegedly leaked was either dated, represented low-level opinions, or was already commonly understood and known due to previous public disclosures. The requested deposition is needed due to the Article 32 Investigating Officer's improper determination that Former Secretary Gates was not reasonably

SUBJECT: Request for Oral Depositions - United States v. PFC Bradley Manning

available at the Article 32 hearing. Former Secretary Gates was an essential witness and should have been produced in person at the Article 32 hearing.

- j. Secretary Hillary R. Clinton, U.S. Department of State, 2201 C Street NW, Washington, D.C. 20520. (202) 647-4000. Secretary Clinton will testify that she has raised the issue of the disclosure of diplomatic cables with foreign leaders "in order to assure our colleagues that it will not in any way interfere with American diplomacy or our commitment to continuing important work that is ongoing." Secretary Clinton will also testify that she has not had any concerns expressed to her about whether any nation would continue to work with the United States or would continue to discuss important matters going forward due to the alleged leaks. As such, Secretary Clinton will testify that although the leaks were embarrassing for the administration, she concurs with Former Secretary Gates' opinion that they did not represent significant consequences to foreign policy. The requested deposition is needed due to the Article 32 Investigating Officer's improper determination that Secretary Clinton was not reasonably available at the Article 32 hearing. Secretary Clinton was an essential witness and should have been produced in person at the Article 32 hearing.
3. In accordance with R.C.M. 702(c)(3)(C) the defense requests that the government promptly inform the defense of the action on the request. If the request is denied, the defense requests that the government comply with the rule by providing the reasons for the denial so that a motion to compel can be properly filed with the military judge.
4. The point of contact for this memorandum is the undersigned at (401) 744-3007 or by e-mail at coombs@armycourtartialdefense.com.


DAVID EDWARD COOMBS
Civilian Defense Counsel

Attachment R



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
U.S. ARMY MILITARY DISTRICT OF WASHINGTON
103 THIRD AVENUE
FORT LESLEY J. MCNAIR, DC 20319-5013

01 FEB 2012

ANCG

MEMORANDUM FOR Mr. David E. Coombs, Civilian Defense Counsel

SUBJECT: Response to Request for Oral Depositions – U.S. v. PFC Bradley Manning

1. On 23 January 2012, you requested that I order oral depositions be taken of CPT James Kolky, RADM Kevin Donegan, Mr. Robert Betz, LtGen Robert Schmidle, Jr., VADM Robert Harward, Under Secretary of State Patrick Kennedy, RADM David Woods, Dr. Robert Gates, and Secretary of State Hillary Clinton, alleging that these witnesses were essential to the Article 32 hearing and that the Article 32 investigating officer's (IO) determination that these witnesses were not reasonably available was improper. You also requested an oral deposition of Mr. Robert Roland, stating that he was an essential witness, and the government should have produced him at the Article 32 hearing.

2. After careful consideration, your request for oral depositions of CPT Kolky, RADM Donegan, Mr. Betz, LtGen Schmidle, VADM Harward, Under Secretary Kennedy, and RADM Woods is:

() approved. Pursuant to RCM 702(d), the Chief, Military Justice will coordinate with the appropriate deposition officer(s) for the oral depositions. Unless an extension is approved by me, the depositions shall occur no later than thirty days from the date of this memorandum.

(*MS*) disapproved. Pursuant to RCM 702(c)(3)(A), I find there is good cause to deny your deposition request. The IO determined that the difficulty, expense, and/or effect on military operations outweighed the significance of the expected testimony of CPT Kolky, RADM Donegan, Mr. Betz, LtGen Schmidle, VADM Harward, Under Secretary Kennedy, and RADM Woods. There is no evidence that the witnesses will not be available at trial if their testimony is determined relevant and necessary, nor is there evidence that the IO's determinations were improper.

3. After careful consideration, your request for oral depositions of Dr. Gates and Secretary Clinton is:

() approved. Pursuant to RCM 702(d), the Chief, Military Justice will coordinate with the appropriate deposition officer(s) for the oral depositions. Unless an extension is approved by me, the depositions shall occur no later than thirty days from the date of this memorandum.

ANCG


SUBJECT: Response to Requests for Oral Depositions – U.S. v. PFC Bradley Manning

(~~MSA~~) disapproved. Pursuant to RCM 702(c)(3)(A), I find there is good cause to deny your deposition request. The IO determined that the expected testimony of Dr. Gates and Secretary Clinton were not relevant to the Article 32 investigation. There is no evidence that the witnesses will not be available at trial if their testimony is determined relevant and necessary, nor is there evidence that the denial of the witness requests was improper.

4. After careful consideration, your request for an oral deposition of Mr. Roland is:

() approved. Pursuant to RCM 702(d), the Chief, Military Justice will coordinate with the appropriate deposition officer for the oral deposition. Unless an extension is approved by me, the deposition shall occur no later than thirty days from the date of this memorandum.

(~~MSA~~) disapproved. Pursuant to RCM 702(c)(3)(A), I find there is good cause to deny this deposition request. You did not request Mr. Roland as an Article 32 witness, and there is no evidence that the witness will not be available at trial if his testimony is determined relevant and necessary.


MICHAEL S. LINNINGTON
Major General, U.S. Army
Commanding

CF:

1-Trial Counsel

1-Defense Counsel

Attachment S

UNITED STATES

v.

MANNING, Bradley E., PFC

U.S. Army, xxx-xx-xx

Headquarters and Headquarters Company, U.S.

Army Garrison, Joint Base Myer-Henderson Hall,

Fort Myer, VA 22211

**DEFENSE DISCOVERY
REQUEST**

DATED: 20 January 2012

1. In accordance with the Rules for Courts-Martial and the Military Rules of Evidence, Manual for Courts-Martial, United States, 2008, Article 46, Uniform Code of Military Justice, and other applicable law, request for discovery is hereby made for the charged offenses in the case of United States v. Bradley E. Manning.

2. The Defense requests that the Government respond to each item listed in its previous discovery requests of 29 October 2010, 15 November 2010, 8 December 2010, 10 January 2011, 19 January 2011, 16 February 2011, 13 May 2011, 13 October 2011, 15 November 2011, and 16 November 2011 and to also respond to the following additional discovery:

a) Complete contact information for Mr. Robert E. Betz, USCYBERCOM Chief Classification Advisory Officer;

b) Complete contact information for Mr. Patrick F. Kennedy, Under Secretary of State for Management;

c) Complete contact information for Mr. Robert Roland;

d) Complete contact information for the individual that completed the Classification Review for the item charged in Specification 15 of Charge II. The Defense also requests a copy of the Classification Review for the item charged in Specification 15 of Charge II.

3. The Defense requests that the Government respond to the following additional questions regarding previously requested discovery:

a) Does the Government possess any report, damage assessment or recommendation by the WikiLeaks Task Force or any other CIA member concerning the alleged leaks in this case? If yes, please indicate why these items have not been provided to the Defense. If no, please indicate why the Government has failed to secure these items;

b) Does the Government possess any report, damage assessment, or recommendation as a result of any joint investigation with the Federal Bureau of Investigation (FBI) or any other governmental agency concerning the alleged leaks in this case? If yes, please indicate why these

items have not been provided to the Defense. If no, please indicate why the Government has failed to secure these items:

c) Does the Government possess any report, damage assessment, or recommendation by the Information Review Task Force (IRTF) concerning the alleged leaks in this case? If yes, please indicate why these items have not been provided to the Defense. If no, please indicate why the Government has failed to secure these items;

d) Does the Government possess any report, damage assessment, or recommendation by the Department of Justice concerning the alleged leaks in this case? If yes, please indicate why these items have not been provided to the Defense. If no, please indicate why the Government has failed to secure these items:

e) Does the Government possess any report, damage assessment, or recommendation by the Department of State concerning the alleged leaks in this case? If yes, please indicate why these items have not been provided to the Defense. If no, please indicate why the Government has failed to secure these items;

f) Does the Government possess any report, damage assessment, or recommendation by the Office of the Director of National Intelligence concerning the alleged leaks in this case? If yes, please indicate why these items have not been provided to the Defense. If no, please indicate why the Government has failed to secure these items;


g) Does the Government possess any report, damage assessment, or recommendation by the Defense Intelligence Agency concerning the alleged leaks in this case? If yes, please indicate why these items have not been provided to the Defense. If no, please indicate why the Government has failed to secure these items:

h) Does the Government possess any report, damage assessment, or recommendation by the Office of the National Counterintelligence Executive concerning the alleged leaks in this case? If yes, please indicate why these items have not been provided to the Defense. If no, please indicate why the Government has failed to secure these items;

4. The Defense requests that the Government provide notice in writing if it does not intend to comply with any specific provision of this request.

5. It is understood that this is a continuing request.

6. A copy of this request was served on Trial Counsel by email on 20 January 2012.


DAVID EDWARD COOMBS
Civilian Defense Counsel

Attachment T



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
U.S. ARMY MILITARY DISTRICT OF WASHINGTON
210 A STREET
FORT LESLEY J. MCNAIR, DC 20319-5013

ANJA-CL

27 January 2012

MEMORANDUM FOR Mr. David E. Coombs, Civilian Defense Counsel

SUBJECT: Response to Defense Request for Discovery, 20 January 2012 – United States v. EC Bradley Manning

1. The below responses to the defense discovery request account for the ongoing national security concerns of this case, the ongoing law enforcement investigation(s), and comply with the limitations of applicable Executive Orders.

2. Discovery Response.

a. Complete contact information for Mr. Robert E. Buz, US CYBERCOM Chief Classification Advisory Officer. *See* Discovery Request, paragraph 2(a).

RESPONSE: The United States will not provide the requested information. The defense has failed to provide any basis for its request. The defense is invited to renew its request with more specificity and an adequate basis for its request.

b. Complete contact information for Mr. Patrick F. Kennedy, Under Secretary of State for Management. *See* Discovery Request, paragraph 2(b).

RESPONSE: The United States will not provide the requested information. The defense has failed to provide any basis for its request. The defense is invited to renew its request with more specificity and an adequate basis for its request.

c. Complete contact information for Mr. Robert Roland. *See* Discovery Request, paragraph 2(c).

RESPONSE: The United States will not provide the requested information. The defense has failed to provide any basis for its request. The defense is invited to renew its request with more specificity and an adequate basis for its request.

d. Complete contact information for the individual that completed the Classification Review for the item charged in Specification 15 of Charge II. The Defense also requests a copy of the Classification Review for the item charged in Specification 15 of Charge II. *See* Discovery Request, paragraph 2(d).

ANJA-CL

SUBJECT: Response to Defense Request for Discovery, 20 January 2012 – United States v. PFC Bradley Manning

RESPONSE: The United States will not provide the requested contact information. The defense has failed to provide any basis for its request. The defense is invited to renew its request with more specificity and an adequate basis for its request.

3. Response to Defense Questions.

a. Does the Government possess any report, damage assessment or recommendation by the WikiLeaks Task Force or any other CIA member concerning the alleged leaks in this case? If yes, please indicate why these items have not been provided to the Defense. If no, please indicate why the Government has failed to secure these items. *See Discovery Request, paragraph 3(a).*

RESPONSE: The United States will provide a response to this request no later than 3 February 2012.

b. Does the Government possess any report, damage assessment, or recommendation as a result of any joint investigation with the Federal Bureau of Investigation (FBI) or any other governmental agency concerning the alleged leaks in this case? If yes, please indicate why these items have not been provided to the Defense. If no, please indicate why the Government has failed to secure these items. *See Discovery Request, paragraph 3(b).*

RESPONSE: The United States will provide a response to this request no later than 3 February 2012.

c. Does the Government possess any report, damage assessment, or recommendation by the Information Review Task Force (IRTF) concerning the alleged leaks in this case? If yes, please indicate why these items have not been provided to the Defense. If no, please indicate why the Government has failed to secure these items. *See Discovery Request, paragraph 3(c).*

RESPONSE: The United States will provide a response to this request no later than 3 February 2012.

d. Does the Government possess any report, damage assessment, or recommendation by the Department of Justice concerning the alleged leaks in this case? If yes, please indicate why these items have not been provided to the Defense. If no, please indicate why the Government has failed to secure these items. *See Discovery Request, paragraph 3(d).*

RESPONSE: The United States will provide a response to this request no later than 3 February 2012.

e. Does the Government possess any report, damage assessment, or recommendation by the Department of State concerning the alleged leaks in this case? If yes, please indicate why these items have not been provided to the Defense. If no, please indicate why the Government has failed to secure these items. *See Discovery Request, paragraph 3(e).*

ANJA-CL

SUBJECT: Response to Defense Request for Discovery, 20 January 2012 – United States v. PFC Bradley Manning

RESPONSE: The United States will provide a response to this request no later than 3 February 2012.

f. Does the Government possess any report, damage assessment, or recommendation by the Office of the Director of National Intelligence concerning the alleged leaks in this case? If yes, please indicate why these items have not been provided to the Defense. If no, please indicate why the Government has failed to secure these items. See Discovery Request, paragraph 2(f).

RESPONSE: The United States will provide a response to this request no later than 3 February 2012.

g. Does the Government possess any report, damage assessment, or recommendation by the Defense Intelligence Agency concerning the alleged leaks in this case? If yes, please indicate why these items have not been provided to the Defense. If no, please indicate why the Government has failed to secure these items. See Discovery Request, paragraph 3(g).

RESPONSE: The United States will provide a response to this request no later than 3 February 2012.

h. Does the Government possess any report, damage assessment, or recommendation by the Office of the National Counterintelligence Executive concerning the alleged leaks in this case? If yes, please indicate why these items have not been provided to the Defense. If no, please indicate why the Government has failed to secure these items. See Discovery Request, paragraph 3(h).

RESPONSE: The United States will provide a response to this request no later than 3 February 2012.

4. The United States understands its continuing discovery obligation and acknowledges its requirements under Article 46, UCMJ, the Rules for Courts-Martial, and relevant case law.


ASHDEN FEIN
CPT, JA
Trial Counsel

Attachment U

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Subject: Discovery

From: coombs@armycourtartialdefense.com

Date: Fri, Jan 27, 2012 8:56 pm

To: "Fein, Ashden CPT USA JFHQ-NCR/MDW SJA" <Ashden.Fein@jfhqncr.northcom.mil>
"Kemkes, Matthew J MIL USA" <matthew.kemkes@us.army.mil>, "Bouchard, Paul R
CPT USARMY (US)" <paul.r.bouchard.mil@mail.mil>, "Tooman, Joshua J CPT
USARMY (US)" <joshua.j.tooman.mil@mail.mil>, "Morrow III, JoDean, CPT USA JFHQ-
NCR/MDW SJA" <JoDean.Morrow@jfhqncr.northcom.mil>, "Overgaard, Angel M.
Cc: CPT USA JFHQ-NCR/MDW SJA" <Angel.Overgaard@jfhqncr.northcom.mil>, "Whyte,
Jeffrey H. CPT USA JFHQ-NCR/MDW SJA" <Jeffrey.Whyte@jfhqncr.northcom.mil>,
"Ford, Arthur D. WO1 USA JFHQ-NCR/MDW SJA"
<Arthur.Ford@jfhqncr.northcom.mil>

Ashden,

Thank you for the discovery responses. I am a little confused by the government's response regarding contact information for Mr. Betz, Mr. Kennedy and Mr. Roland. Is it the government's position that even though you have ready access to the contact information for these potential witnesses, you will not provide this information to the defense?

If so, can you elaborate the basis for your denial to provide this information that is consistent with the requirements of Article 46, UCMJ?

Also, each of your discovery responses has words with missing letters. I don't know if this is a program issue with your PDF software or some other strange glitch. For instance, the discovery response for the 29 October discovery request has several words on the first page missing letters ("investigat[]ons") and ("th[] trial coun[]el").

Best,
David

David E. Coombs, Esq.
Law Office of David E. Coombs
11 South Angell Street, #317
Providence, RI 02906
Toll Free: 1-800-588-4156
Local: (508) 689-4616
Fax: (508) 689-9282
coombs@armycourtartialdefense.com
www.armycourtartialdefense.com

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Subject: 4 of 4

From: "Fein, Ashden CPT USA JFHQ-NCR/MDW SJA" <Ashden.Fein@jfhqncr.northcom.mil>

Date: Mon, Jan 30, 2012 11:42 am

To: <coombs@armycourtmartialdefense.com>

"Matthew kemkes" <matthew.kemkes@us.army.mil>, "Bouchard, Paul R CPT USARMY (US)" <paul.r.bouchard.mil@mail.mil>, "Tooman, Joshua J CPT USARMY (US)" <joshua.j.tooman.mil@mail.mil>, "Morrow III, JoDean, CPT USA JFHQ-NCR/MDW SJA" <JoDean.Morrow@jfhqncr.northcom.mil>, "Overgaard, Angel M.

Cc: CPT USA JFHQ-NCR/MDW SJA" <Angel.Overgaard@jfhqncr.northcom.mil>, "Whyte, Jeffrey H. CPT USA JFHQ-NCR/MDW SJA" <Jeffrey.Whyte@jfhqncr.northcom.mil>, "Ford, Arthur D. WO1 USA JFHQ-NCR/MDW SJA" <Arthur.Ford@jfhqncr.northcom.mil>

Attach: 120127-Response to Defense Discovery Request (29 Oct 10) Defense.pdf

David,

In the past 4 emails (including this one), I sent you the same discovery responses as before, but in a different format. This should fix the issue you identified.

As for the contact information for Mr. Betz, Ambassador Kennedy, and Mr. Roland- All three are not currently identified as government witnesses. If they are identified as witnesses, then their contact information will be provided pursuant to the government's requirements under Article 46, UCMJ and relevant portions of the RCM. If this is not responsive, the defense is invited to renew its request with a more specific basis and the proper authority for receiving the contact information.

Although we responded the defense will receive the remainder of our responses by Friday (focusing on damage assessments, if any), we hope to have the authority to respond by tomorrow.

v/r

Ashden

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Subject: RE: 4 of 4

From: coombs@armycourt martialdefense.com

Date: Mon, Jan 30, 2012 4:10 pm

To: "Fein, Ashden CPT USA JFHQ-NCR/MDW SJA" <Ashden.Fein@jfhqncr.northcom.mil>
"Matthew kemkes" <matthew.kemkes@us.army.mil>, "Bouchard, Paul R CPT
USARMY (US)" <paul.r.bouchard.mil@mail.mil>, "Tooman, Joshua J CPT USARMY
(US)" <joshua.j.tooman.mil@mail.mil>, "Morrow III, JoDean, CPT USA JFHQ-
NCR/MDW SJA" <JoDean.Morrow@jfhqncr.northcom.mil>, "Overgaard, Angel M.
CPT USA JFHQ-NCR/MDW SJA" <Angel.Overgaard@jfhqncr.northcom.mil>, "Whyte,
Jeffrey H. CPT USA JFHQ-NCR/MDW SJA" <Jeffrey.Whyte@jfhqncr.northcom.mil>,
"Ford, Arthur D. WO1 USA JFHQ-NCR/MDW SJA"
<Arthur.Ford@jfhqncr.northcom.mil>

Ashden,

Thank you for providing new copies of the government's discovery responses.

I am still confused by the government's refusal to provide contact information for Mr. Roland, Ambassador Kennedy, and Mr. Betz. At this point, it appears that the government is improperly impeding the defense's access to these potential witnesses. In discovery, the government provided the defense with an unsworn declaration from each of these potential witnesses. Additionally, you introduced these declarations into evidence at the Article 32, and were prepared to call each by telephone should the IO deem the unsworn declarations inadmissible. Therefore, the defense would like to interview Mr. Roland, Ambassador Kennedy and Mr. Betz.

The requirements of Article 46 are not dependant upon whether the government ultimately decides to list a particular individual on their witness list or not. Instead, it speaks to the right of the trial counsel, defense counsel, and court-martial to obtain witnesses and other evidence. Please provide contact information for Mr. Roland, Ambassador Kennedy and Mr. Betz by 1700 tomorrow.

Best,
David

David E. Coombs, Esq.
Law Office of David E. Coombs
11 South Angell Street, #317
Providence, RI 02906
Toll Free: 1-800-588-4156
Local: (508) 689-4616
Fax: (508) 689-9282

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Subject: RE: 4 of 4

From: "Fein, Ashden CPT USA JFHQ-NCR/MDW SJA" <Ashden.Fein@jfhqncr.northcom.mil>

Date: Tue, Jan 31, 2012 4:48 pm

To: <coombs@armycourtmartialdefense.com>

"Matthew kemkes" <matthew.kemkes@us.army.mil>, "Bouchard, Paul R CPT USARMY (US)" <paul.r.bouchard.mil@mail.mil>, "Tooman, Joshua J CPT USARMY (US)" <joshua.j.tooman.mil@mail.mil>, "Morrow III, JoDean, CPT USA JFHQ-NCR/MDW SJA" <JoDean.Morrow@jfhqncr.northcom.mil>, "Overgaard, Angel M.

Cc: CPT USA JFHQ-NCR/MDW SJA" <Angel.Overgaard@jfhqncr.northcom.mil>, "Whyte, Jeffrey H. CPT USA JFHQ-NCR/MDW SJA" <Jeffrey.Whyte@jfhqncr.northcom.mil>, "Ford, Arthur D. WO1 USA JFHQ-NCR/MDW SJA" <Arthur.Ford@jfhqncr.northcom.mil>

Attach: 120131-Defense Discovery Response (Multiple-Damage)-Defense.pdf

David,

At this time, we will not provide the contact information for Mr. Roland, Ambassador Kennedy, or Mr. Betz; however, if they are designated as government witnesses we will not only provide the information, but coordinate meetings for the defense to interview these senior level officials, and any other senior officials designated as government witnesses. These meetings will be well before trial so that each party has adequate opportunity to prepare its case and equal opportunity to interview witnesses.

As of today, none of these three individuals will be witnesses at a court-martial, if the case is referred. Although the United States intends to call senior military/government officials as witnesses, we have not identified these individuals as our witnesses. The United States understands its obligations under Article 46, UCMJ, applicable rules, and applicable case law, and is confident the defense will have equal opportunity to obtain witnesses, as defined by these sources and overseen by a military judge.

Also, as a reminder, please remain cognizant of the classified and otherwise sensitive nature of these individuals' work and their relationship to this case.

Attached is our reply to your previous discovery requests, in reference to damage assessments and other documents related to DOD and Executive Branch departments and agencies.

v/r
Ashden

-----Original Message-----

From: coombs@armycourtmartialdefense.com
[mailto:coombs@armycourtmartialdefense.com]

Sent: Monday, January 30, 2012 4:11 PM

To: Fein, Ashden CPT USA JFHQ-NCR/MDW SJA

Cc: Matthew kemkes; Bouchard, Paul R CPT USARMY (US); Tooman, Joshua J CPT USARMY (US); Morrow III, JoDean, CPT USA JFHQ-NCR/MDW SJA; Overgaard, Angel M. CPT USA JFHQ-NCR/MDW SJA; Whyte, Jeffrey H. CPT USA JFHQ-NCR/MDW SJA; Ford, Arthur D. WO1 USA JFHQ-NCR/MDW SJA
Subject: RE: 4 of 4

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Subject: RE: 4 of 4

From: coombs@armycourtartialdefense.com

Date: Tue, Jan 31, 2012 5:41 pm

To: "Fein, Ashden CPT USA JFHQ-NCR/MDW SJA" <Ashden.Fein@jfhqncr.northcom.mil>

"Matthew kemkes" <matthew.kemkes@us.army.mil>, "Bouchard, Paul R CPT USARMY (US)" <paul.r.bouchard.mil@mail.mil>, "Tooman, Joshua J CPT USARMY (US)" <joshua.j.tooman.mil@mail.mil>, "Morrow III, JoDean, CPT USA JFHQ-NCR/MDW SJA" <JoDean.Morrow@jfhqncr.northcom.mil>, "Overgaard, Angel M.

Cc: CPT USA JFHQ-NCR/MDW SJA" <Angel.Overgaard@jfhqncr.northcom.mil>, "Whyte, Jeffrey H. CPT USA JFHQ-NCR/MDW SJA" <Jeffrey.Whyte@jfhqncr.northcom.mil>, "Ford, Arthur D. WO1 USA JFHQ-NCR/MDW SJA" <Arthur.Ford@jfhqncr.northcom.mil>, "Melissa Santiago" <melissa.s.santiago@us.army.mil>

Ashden,

I would like to explore the possibility of calling these individuals as defense witnesses. Please be so kind as to provide contact information for them. Thank you.

Best,
David

David E. Coombs, Esq.
Law Office of David E. Coombs
11 South Angell Street, #317
Providence, RI 02906
Toll Free: 1-800-588-4156
Local: (508) 689-4616
Fax: (508) 689-9282
coombs@armycourtartialdefense.com
www.armycourtartialdefense.com

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Subject: RE: 4 of 4

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Subject: RE: 4 of 4

From: "Fein, Ashden CPT USA JFHQ-NCR/MDW SJA" <Ashden.Fein@jfhqncr.northcom.mil>

Date: Wed, Feb 01, 2012 6:12 pm

To: <coombs@armycourtartialdefense.com>

"Matthew kemkes" <matthew.kemkes@us.army.mil>, "Bouchard, Paul R CPT USARMY (US)" <paul.r.bouchard.mil@mail.mil>, "Tooman, Joshua J CPT USARMY (US)" <joshua.j.tooman.mil@mail.mil>, "Morrow III, JoDean, CPT USA JFHQ-NCR/MDW SJA" <JoDean.Morrow@jfhqncr.northcom.mil>, "Overgaard, Angel M.

Cc: CPT USA JFHQ-NCR/MDW SJA" <Angel.Overgaard@jfhqncr.northcom.mil>, "Whyte, Jeffrey H. CPT USA JFHQ-NCR/MDW SJA" <Jeffrey.Whyte@jfhqncr.northcom.mil>, "Ford, Arthur D. WO1 USA JFHQ-NCR/MDW SJA" <Arthur.Ford@jfhqncr.northcom.mil>, "Melissa Santiago" <melissa.s.santiago@us.army.mil>

Attach: 120201-Defense Computer Forensics Expert Consultants.pdf

120201-GCMCA Response to Request for Oral Depositions.pdf

David,

Absolutely. We will start working with each organization to determine the best way for the defense to contact the individuals.

Attached are the GCMCA's decisions on the Defense Computer Forensic Experts and the Deposition Requests.

Have a good night.

v/r
Ashden

-----Original Message-----

From: coombs@armycourtartialdefense.com

[mailto:coombs@armycourtartialdefense.com]

Sent: Tuesday, January 31, 2012 5:42 PM

To: Fein, Ashden CPT USA JFHQ-NCR/MDW SJA

Cc: Matthew kemkes; Bouchard, Paul R CPT USARMY (US); Tooman, Joshua J CPT USARMY (US); Morrow III, JoDean, CPT USA JFHQ-NCR/MDW SJA; Overgaard, Angel M. CPT USA JFHQ-NCR/MDW SJA; Whyte, Jeffrey H. CPT USA JFHQ-NCR/MDW SJA; Ford, Arthur D. WO1 USA JFHQ-NCR/MDW SJA; Melissa Santiago

Subject: RE: 4 of 4

Ashden,

I would like to explore the possibility of calling these individuals as defense witnesses. Please be so kind as to provide contact information for them. Thank you.

Best,
David

David E. Coombs, Esq.
Law Office of David E. Coombs

UNITED STATES

v.

MANNING, Bradley E., PFC

U.S. Army, xxx-xx- [REDACTED]

Headquarters and Headquarters Company, U.S.

Army Garrison, Joint Base Myer-Henderson Hall,

Fort Myer, VA 22211

**DEFENSE MOTION TO
COMPEL DISCOVERY**

DATED: 16 February 2012

RELIEF SOUGHT

1. In accordance with the Rules for Courts-Martial (R.C.M.) 701(a)(5), 701(a)(6), and 906(b)(6), Manual for Courts-Martial (M.C.M.), United States, 2008; Article 46, Uniform Code of Military Justice (UCMJ); and the Fifth and Sixth Amendments to the United States Constitution, the Defense respectfully requests that the Court compel the following discovery.

a. FOIA Requests Regarding Video in Specification 2 of Charge II: A copy of any Freedom of Information Act (FOIA) request and any response or internal discussions of any such FOIA request that is related to the video that is the subject of Specification 2 of Charge II. The Defense originally requested this information on 29 October 2010. The Government, on 12 April 2011, stated that "it had provided a portion of this information and understands its continuing obligation to provide information responsive to this request." The Government provided an 80-page document that was released by CENTCOM on 5 April 2010, the same day that WikiLeaks first released the video charged in Specification 2 of Charge II. The released document by CENTCOM was a redacted version of the 15-6 investigation into the incident and not released in response to any FOIA request. Thus, the provided discovery was not responsive to the Defense's request. On 27 January 2012, the Government amended its response to the Defense's request by stating "[t]he United States will not provide the requested information." The Government also indicated that it was "unaware of any information in this request that is relevant and necessary to the charges in this case that require disclosure."

b. Quantico Video: The video of PFC Manning being ordered to surrender his clothing at the direction of CWO4 James Averhart and his subsequent interrogation by CWO4 Averhart on 18 January 2011. The Defense filed a preservation of evidence request over one year ago, on 19 January 2011 for this information. See Attachment A. The Government produced the video of PFC Manning being ordered to surrender his clothing, but not the video of the subsequent interrogation by CWO4 Averhart. The Defense alerted the Government to the need to locate the additional video in a telephone conversation on 12 December 2011. The Government indicated that it would attempt to locate the video, but has not done so.

c. EnCase Forensic Images: An Encase forensic image of each computer from the Tactical Sensitive Compartmented Information Facility (T-SCIF) and the Tactical Operations Center (TOC) of Headquarters and Headquarters Company (HHC), 2nd Brigade Combat Team (BCT),

10th Mountain Division, Forward Operating Base (FOB) Hammer, Iraq. The lead investigative unit for the government requested preservation of these items on 30 September 2010. *See* Attachment B. Additionally, the Defense submitted a preservation request for this evidence on 21 September 2011. *See* Attachment C. Given the government's own preservation request, the Defense believed it would be easy enough to obtain the requested forensic images. On 22 September 2011, the Government requested clarification of the Defense's preservation request. Ultimately, the Government acknowledged that it understood that it needed to preserve all SIPRNet hard-drives from the T-SCIF and the TOC and also provide a forensic image of all other computers seized by the United States. *Id.*

d. Damage Assessments and Closely Aligned Investigations: The following damage assessments and records from closely aligned investigations:

(1) Central Intelligence Agency: Any report completed by the WikiLeaks Task Force (WTF) and any report generated by the WTF under the direction of former Director Leon Panetta.

(2) Department of Defense: The damage assessment completed by the IRTF and any report generated by the IRTF under the guidance and direction of former Secretary of Defense Robert Gates. Additionally, the Defense requests all forensic results and investigative reports by any of the cooperating agencies in this investigation (DOS, FBI, DIA, the Office of the National Counterintelligence Executive and the CIA).

(3) Department of Justice: Any documentation related to the DOJ investigation into the disclosures by WikiLeaks concerning PFC Bradley Manning, including any grand jury testimony or any information relating to any 18 U.S.C. § 2703(d) order or any search warrant by the government of Twitter, Facebook, Google or any other social media site.

(4) Department of State: The damage assessment completed by the DOS, any report generated by the task force assigned to review each released diplomatic cable, and any report or assessment by the DOS concerning the released diplomatic cables.

BURDEN OF PERSUASION AND BURDEN OF PROOF

2. As the moving party, the Defense has the burden of persuasion. R.C.M. 905(c)(2). The burden of proof is by a preponderance of the evidence. R.C.M. 905(c)(1).

FACTS

3. PFC Manning is charged with five specifications of violating a lawful general regulation, one specification of aiding the enemy, one specification of disorders and neglects to the prejudice of good order and discipline and service discrediting, eight specifications of communicating classified information, five specifications of stealing or knowingly converting Government

property, and two specifications of knowingly exceeding authorized access to a Government computer, in violation of Articles 92, 104, and 134, UCMJ, 10 U.S.C. §§ 892, 904, 934 (2010).

4. The original charges were preferred on 5 July 2010. Those charges were dismissed by the convening authority on 18 March 2011. The current charges were preferred on 1 March 2011. On 16 December through 22 December 2011, these charges were investigated by an Article 32 Investigating Officer. The charges were subsequently referred without special instructions to a general court-martial on 3 February 2012.

5. It has been a long and arduous road for the Defense to obtain specifically requested items of discovery. The Defense submitted its first discovery request over 15 months ago, on 29 October 2010. See Attachment D. The Government did not immediately respond in writing to this request. Due to the lack of a written response, the Defense submitted additional discovery requests on 15 November 2010, 8 December 2010, 10 January 2011, 19 January 2011 and 16 February 2011. *Id.*

a. In the 15 November 2010 discovery request, the Defense requested that the Government provide, among other things, the classification determinations by the Original Classification Authorities (OCA) as well as the OCAs' damage assessments. This information was required to be completed by DOD Directive 5210.50, DOD Directive 5200.1, DOD Instruction 5240.4.

b. In the 8 December 2010 discovery request, the Defense requested a copy of any forensic result, investigative report, or damage assessment by the Department of State (DOS), Department of Defense (DOD), Department of Justice (DOJ), Federal Bureau of Investigation (FBI), and the Central Intelligence Agency (CIA). At the time of this request, the DOS had announced that it was conducting a thorough review of each released cable in an effort to identify any possible damage due to its release. The DOD was conducting a similar investigation regarding the Significant Activity Reports (SIGACTs) from Afghanistan and Iraq. The DOD had directed the Defense Intelligence Agency (DIA) to form a task force called the Information Review Task Force (IRTF) to review all items allegedly disclosed to WikiLeaks. Finally, then Secretary of Defense Robert Gates and Attorney General Eric Holder announced that there was an ongoing joint investigation by the DOD, DOS, DOJ, FBI and CIA.

c. In the 10 January 2011 discovery request, the Defense requested that the Government disclose items seized by the DOJ and other agencies pursuant to 18 U.S.C. § 2703(d).

d. In the 19 January 2011 discovery request, the Defense requested that the Government preserve the Quantico confinement facility video tape of CWO4 James Averhart. This video documents the Brig Commander, CWO4 Averhart, ordering PFC Manning to be placed in suicide prevention. The decision to strip PFC Manning of his clothes and place him under suicide prevention was made over the recommendation of the Brig's psychiatrist Captain (O6) William Hocter.

e. In the 16 February 2011 discovery request, the Defense reiterated its request for any damage assessment or information review conducted by any governmental agency or at the direction of any governmental agency.

6. Instead of responding in writing, the Government periodically sent the Defense purported discovery on compact discs. The discovery provided by the Government was Bates numbered using a software program that provided for consecutive numbering of each page. The discs provided by the Government ranged in size from a few hundred pages of Bates numbered discovery to discs with well over twenty thousand pages of Bates numbered discovery. The Government did not organize the discovery in any manner that would indicate how it was responsive to the Defense's specific discovery requests. Additionally, the provided discovery often seem to unnecessarily include multiple copies of the same items – for instance the Government provided multiple copies of the Army's Preliminary Inquiry, multiple copies of the 15-6 investigation by the United States Forces – Iraq, multiple copies of the Secretary of the Army's 15-6 Investigation, multiple copies of the Army's Criminal Investigative Division investigation, and even multiple copies of the Congressional 9-11 Report. In addition to multiple copies of collateral investigations, the Government also provided entire copies of Army Regulations, Instructions and Training Manuals.¹

7. It was not until 12 April 2011, six months after the Defense's initial discovery request, that the Government chose to respond in writing to the multiple discovery requests submitted by the Defense. See Attachment E. The Government's general response to each of the Defense's discovery requests was a variation of one of the following:

- a) "The United States has provided a portion of this information and understands its continuing obligation to provide information responsive to this request";
- b) "The United States has provided all matters requested that are its possession and understands its continuing obligation to provide information responsive to this request";
- c) "The United States does not presently have the authority to disclose this classified information and will make a determination whether to provide the information if and when it becomes available"; or
- d) "The United States will not provide the requested information. The defense has failed to provide any basis for its request. The United States will reconsider this request when provided with an authority that obligates the United States to provide the requested information." *Id.*

8. Based upon the lack of information provided by the Government in its 12 April 2011 discovery responses, the Defense submitted additional discovery requests on 13 May 2011, 21 September 2011, 13 October 2011, 15 November 2011, and 16 November 2011. See Attachment F.

a. In the 13 May 2011 discovery request, the Defense again specifically requested any investigative summaries, damage assessments or OCA determinations conducted by the United States Army, DOD, DOJ, NSA, DIA, Department of Homeland Security Office of Intelligence and Analysis, FBI, and the Bureau of Diplomatic Security (DS). The Defense informed the Government of its affirmative obligation to seek out the requested discovery even if those items

¹ The Defense estimates at least 5,000 page of the unclassified discovery are duplicates of items previously provided by the Government.

were not already in its immediate possession. The Defense cited *United States v. Williams*, 50 M.J. 436, 441 (C.A.A.F. 1999), *United States v. Bryan*, 868 F.2d 1032, 1036 (9th Cir. 1989), and *United States v. Brooks*, 966 F.2d 1500, 1503 (1992) for the proposition that the above requested items were considered to be in the possession of the Government because they were in the control of agencies that were “closely aligned” with the Government’s case. The Defense also requested any *Brady* or *Jenks* material.

b. In the 21 September 2011 discovery request, the Defense requested that the Government preserve all of the hard drives from the Tactical Sensitive Compartmented Information Facility (T-SCIF) and the Tactical Operations Center (TOC) of Headquarters and Headquarters Company, 2nd Brigade Combat Team, 10th Mountain Division, Forward Operating Base Hammer, Iraq.

c. In the 13 October 2011 discovery request, the Defense requested the ability to inspect the hard drives from computers in the Tactical Sensitive Compartmented Information Facility (T-SCIF) and the Tactical Operations Center (TOC) of Headquarters and Headquarters Company, 2nd Brigade Combat Team, 10th Mountain Division, Forward Operating Base Hammer, Iraq. The Defense also reiterated its request for any report or recommendation from the CIA (it had now formed a WikiLeaks Task Force (WTF)) DOJ, DOS, ODNI, and any other governmental intelligence agency that participated in the investigation.

d. In the 15 November 2011 discovery request, the Defense requested classification reviews and damage assessments for items charged in Specifications 8, 9, and 15 of Charge II.

e. In the 16 November 2011 discovery request, the Defense requested an EnCase forensic image of any computer seized by the Government and any information relied upon the Government to allege that PFC Manning gave information to any unauthorized individual in the 2009 timeframe. The Defense also renewed its request for any damage assessment or review completed in the case with the assistance of DIA, ODNI, or any other governmental agency.

9. The Government chose not to respond in a timely manner to the Defense discovery requests dated 13 May 2011, 21 September 2011, 13 October 2011, 15 November 2011, and 16 November 2011. Instead, the Government continued its practice of providing Bates numbered discovery on discs to the Defense without indicating how this discovery was responsive, if at all, to the Defense’s requests.

10. On 16 November 2011, the Government notified the Defense and the Article 32 Investigating Officer (IO) that the Special Court-Martial Convening Authority (SPCMA) had ordered the restart of the Article 32. See Attachment G. The SPCMA ordered the Article 32 to start no earlier than thirty days from 16 November and to conclude no later than sixty days from 16 November. *Id.* Given the Government’s failure to respond to the Defense’s requests filed on 13 May 2011, 21 September 2011, 13 October 2011, 15 November 2011, and 16 November 2011, the Defense filed a Defense Request for Production of Evidence with the Article 32 IO. See Attachment H.

11. The request submitted to the Article 32 IO by the Defense requested several items that had not been provided by the Government. Among the items requested by the Defense were the following:

a. Quantico Video: The Defense requested a copy of the video of PFC Manning being ordered to surrender his clothing at the direction of CWO4 James Averhart and the subsequent interrogation by CWO4 Averhart. The defense stated that the requested item was relevant to support PFC Manning's claim of unlawful pretrial punishment. The Defense cited the discussion section to R.C.M. 405(e) as authority for the right to obtain the requested information. The discussion to R.C.M. 405(e) supported the ability of the Article 32 IO to consider issues such as unlawful pretrial punishment.

b. EnCase Forensic Images: The Defense requested an EnCase forensic image of each computer from the T-SCIF and the TOC of Headquarters and Headquarter Company, 2nd Brigade Combat Team, 10th Mountain Division, Forward Operating Base Hammer, Iraq. An inspection of all seized governmental computers from the T-SCIF and TOC would have allowed the Defense to provide evidence that it was common for soldiers to add technically unauthorized computer programs to their computers. The practice of the unit was to tacitly authorize that addition of unauthorized programs including but not limited to: mIRC (a full featured Internet Relay Chat client for Windows that can be used to communicate, share, play or work with others on IRC networks); Wget (a web crawler program designed for robustness over slow or unstable network connections); GEOTRANS (an application program which allows a user to easily convert geographic coordinates among a wide variety of coordinate systems, map projections and datums); and Grid Extractor (a binary executable capable of extracting MGRS grids from multiple free text documents and importing them into a Microsoft Excel spreadsheet) to their computers. The Defense believed this information was relevant since the Government has charged PFC Manning with adding unauthorized software to his government computer in Specification 2 and 3 of Charge III.

c. Damage Assessments and Closely Aligned Investigations: The Defense requested the following damage assessments and records from closely aligned investigations:

(1) Central Intelligence Agency: Any report completed by the WTF and any report generated by the WTF under the direction of former Director Leon Panetta.

(2) Department of Defense: The DOD reached out for assistance from the DOS, FBI, DIA, the Office of the National Counterintelligence Executive and the CIA. The Defense argued that it was entitled to receive all forensic results and investigative reports by any of the cooperating agencies in this investigation. Additionally, the Defense noted that former Secretary of Defense Robert Gates on 29 July 2010 directed the DIA to lead a comprehensive review of the documents allegedly given to WikiLeaks and to coordinate under the IRTF, formerly TF 725, to conduct a complete damage review. The Defense believed, based upon public acknowledgements by representatives of the Government, that the results of this damage review would undercut the testimony of each the OCAs for the charged documents. Specifically, based upon public documents, it appeared that the IRTF concluded that no sources or methods were revealed by the alleged disclosures, and that all of the information allegedly disclosed was

either dated, represented low-level opinions, or was already commonly understood and known due to previous public disclosures.

(3) Department of Justice: The DOJ has conducted a very public investigation into the disclosures by WikiLeaks as referenced by Attorney General of the United States Eric H. Holder. The Defense requested any grand jury testimony and any information relating to any 18 U.S.C. § 2703(d) order or any search warrant by the government of Twitter, Facebook, Google or any other social media site that was relevant to PFC Bradley Manning.

(4) Department of State: The DOS formed a task force of over 120 individuals to review each released diplomatic cable. The task force conducted a damage assessment of the leaked cables and concluded that the information leaked either represented low-level opinions or was already commonly known due to previous public disclosures. According to published reports in multiple new agencies, including the Associated Press, The Huffington Post, and Reuters, internal U.S. government reviews by the Department of Defense and the Department of State determined that the leak of diplomatic cables caused only limited damage to U.S. interests abroad. According to the published account “[a] congressional official briefed on the reviews stated that the administration felt compelled to say publicly that the revelations had seriously damaged American interests in order to bolster legal efforts to shut down the WikiLeaks website and bring charges against the leakers.” The official is quoted as saying “we were told (the impact of WikiLeaks revelations) was embarrassing but not damaging.” *Id.* (source article is at appendix G). This determination was at odds with the classification review conducted by the OCA. As such, the Defense argued that Mr. Patrick Kennedy should not be permitted to espouse an opinion which is inconsistent with the damage assessments conducted by the government.

12. On 30 November 2011, the Government filed a response to the Defense request for production of evidence. *See* Attachment I. The Government indicated that it was seeking to preserve the requested Quantico video and the EnCase forensic images of the T-SCIF and TOC computers. With regards to the damage assessments and the closely aligned investigations, the Government stated the following: “[t]he United States does not presently have the authority to disclose damage assessments, if any, cited by the defense and will make a determination whether to provide the information if and when it because available.” *Id.*

13. On 1 December 2011 the Defense filed a motion to compel production of evidence at the Article 32 hearing. *See* Attachment J. In this motion, the Defense pointed out that the Government failed to respond to the Defense request as envisioned under R.C.M. 405(g)(1)(B). Instead, the Government simply treated the request as another request for discovery and consistent with its previous responses to discovery requests, the Government chose not to produce the requested discovery. The Defense renewed its request for the Article 32 IO to determine whether the information requested by the Defense was relevant and reasonably available. The Defense maintained that if the IO determined the information was relevant and reasonably available, one of the following should have occurred:

a. The IO should have ordered the custodian of the evidence to produce it at the Article 32 hearing and the custodian would then have been required to produce it. R.C.M. 405(g)(2)(C); or

b. The IO should have ordered the custodian of the evidence to produce it at the Article 32 hearing and once ordered, the custodian of the evidence should have determined if the information was reasonably available. If the custodian determined the information was not reasonably available, then this determination would have been binding on the IO and the Defense. The IO would have then been required to include a statement of the reasons for that determination in the record of the investigation. R.C.M. 405(g)(2)(D). Once the case was referred, the Defense would then have been permitted under R.C.M. 906(b)(3) to move the military judge to review the determination during a pretrial session; or

c. The IO should have ordered the custodian of the evidence to produce it at the Article 32 hearing and once ordered, the convening authority could have determined that the evidence should be withheld under Military Rule of Evidence (M.R.E.) 505(d)(5) since production of the evidence would not be done without causing identifiable damage to national security; or

d. The IO should have ordered the custodian of the evidence to produce it at the Article 32 hearing and once ordered, the government could have objected to the production of the evidence on grounds of privilege. If this had been done, the IO could then have conducted an in-camera review under M.R.E. 505(i). A M.R.E. 505(i) review would have been appropriate since the IO should have had the authority to perform those tasks that would clearly impact the conduct of the Article 32 hearing. See R.C.M. 405(i) (providing that rules of privilege in Section V of the M.C.M. apply to the Article 32).

14. On 15 December 2011, the Article 32 IO determined that he would not order the Government to produce any of the Defense requested information. See Attachment K. The IO ruled the following:

a. Quantico Video: The "evidence is not relevant to the form of the charges, the truth of the charges, or information as may be necessary to make an informed recommendation as to disposition; specifically, the circumstances surrounding PFC Manning's placement in suicide risk are not relevant to a determination as whether PFC Manning committed the charged offenses and if so, what the disposition of those charges should be." *Id.*

b. EnCase Forensic Images: The "evidence is relevant as it could help establish that it was common for soldiers in these locations to place unauthorized software to these computers; however, this evidence is not reasonably available because its significance is lessened by the fact it is cumulative to the testimony of at least CPT Keay and CPT Cherepko, and as the government has indicated that it is still working to preserve this evidence, its limited significance is not outweighed by the delay of obtaining this evidence." *Id.*

c. Damage Assessments and Closely Aligned Investigations: The IO ruled as follows:

(1) Central Intelligence Agency: The "evidence is not reasonably available; as this was a joint investigation, this evidence is cumulative with evidence of the CID case file, and its limited significance is not outweighed by the delay in obtaining this evidence." *Id.*

(2) Department of Defense: The "evidence is not relevant to the form of the charges, the truth of the charges, or information as may be necessary to make an informed recommendation as to disposition; specifically, the extent of the harm caused by the charged offenses is not relevant to a determination as to whether PFC Manning committed the charged offenses and if so, what the disposition of those charges should be. Additionally, I understand from the 12 December 2011 telephone conference with CPT Fein and Mr. Coombs that the government does not have the authority to disclose damage assessments and thus I conclude that any evidence of damage assessments is not reasonably available." *Id.*

(3) Department of Justice: The "evidence is not reasonably available; as this was a joint investigation, this evidence is cumulative with evidence of the CID case file, and also the government has said it has no knowledge of grand jury testimony or search warrants from the Department of Justice, which leads to a conclusion that the limited significance of this evidence is not outweighed by the delay in obtaining it." *Id.*

(4) Department of State: The "evidence is not relevant to the form of the charges, the truth of the charges, or information as may be necessary to make an informed recommendation as to disposition; specifically, the extent of the harm caused by the charged offenses is not relevant to a determination as to whether PFC Manning committed the charged offenses and if so, what the disposition of those charges should be. Additionally, I understand from the 12 December 2011 telephone conference with CPT Fein and Mr. Coombs that the government does not have the authority to disclose damage assessments and thus I conclude that any evidence of damage assessments is not reasonably available." *Id.*

15. On 20 January 2012, the Defense submitted an additional discovery request to the Government. *See* Attachment L. The Defense requested contact information for the non-military OCAs. The Defense also requested that the Government respond to specific questions regarding whether the Government had obtained any damage assessment, report, or recommendation from WTF, IRTF, FBI, CIA, DOJ, DOS, ODNI, DIA or the Office of the National Counterintelligence Executive.

16. On 27 January 2012, the Government finally submitted discovery responses to all of the outstanding Defense discovery requests. *See* Attachment M. In addition to these discovery responses, the Government also included amended responses to the Defense discovery requests submitted before 13 May 2011. The Government's 27 January 2011 discovery responses fell generally into one of the following categories:

a. "The United States has provided all matters requested that are in its possession and that the United States has authority to disclose. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request";

b. "The United States understands its obligations under Brady and R.C.M. 701(a)(6) and will comply with those requirements if the United States becomes aware of any such material";

c. "The United States will not provide the requested information. The defense has failed to provide any basis for its request. The United States will reconsider this request when provided with an authority that obligates the United States to provide the requested information";

d. "The United States presently has no knowledge of any such records. The defense is invited to renew its request with more specificity and an adequate basis for its request";

e. "The United States presently has no knowledge of any such records, outside publicly made statements through press conferences or media organizations, equally accessible by the defense. The defense is invited to renew its request with more specificity and an adequate basis for its request";

f. "The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request"; or

g. "The United States will provide a response to this request no later than 3 February 2012."
Id.

17. On 31 January 2012, the Government submitted a general discovery response to the Defense. *See* Attachment N. The Government's discovery response was intended to act as a blanket response to the Defense's multiple requests for damage assessments and investigative files by the various OCAs and government agencies. Instead of providing any of the requested information by the Defense, the Government defaulted to one of the following responses:

a. "The United States will not provide the requested information. The defense has failed to provide any basis for its request. The United States will reconsider this request when provided with an authority that obligates the United States to provide the requested information"; or

b. "If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request." *Id.*

18. In total, the Government has so far provided approximately 78,148 pages of unclassified discovery to the Defense and approximately 333,194 pages of what the Government considers classified discovery. The vast majority of this discovery, however, is not responsive to the specific items repeatedly requested by the Defense and that is the subject of this motion to compel.

WITNESSES/EVIDENCE

19. The Defense does not request any witnesses be produced for this motion. The Defense respectfully requests this court to consider the referenced documents listed as attachments to the motion.

LEGAL AUTHORITY AND ARGUMENT

20. Military courts recognize “a much more direct and generally broader means of discovery by an accused than is normally available to him in civilian courts.” *United States v. Reece*, 25 M.J. 93, 94 (C.M.A. 1987). Regarding discovery, “military law has been preeminent, jealously guaranteeing to the accused the right to be effectively represented by counsel through affording every opportunity to prepare his case by openly disclosing the Government’s evidence.” *United States v. Enloe*, 35 C.M.R. 228, 230 (C.M.A. 1965). The only restrictions placed upon liberal defense discovery are that the information requested must be relevant and necessary to the subject of the inquiry, and the request must be reasonable. *Reece*, 25 M.J. at 95. *See also United States v. Luke*, 69 M.J. 309, 319 (C.A.A.F. 2011) (“The military rules pertaining to discovery focus on equal access to evidence to aid the preparation of the defense and enhance the orderly administration of military justice. To this end, the discovery practice is not focused solely upon evidence known to be admissible at trial. The parties to a court-martial should evaluate pretrial discovery and disclosure issues in light of this liberal mandate.”)(citations omitted).

21. Relevant evidence is “any ‘evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.’” *Id.* at 95, *quoting* M.R.E. 401. In addition, the Court of Military Appeals stated in *United States v. Hart*, 29 M.J. 407, 410 (C.M.A. 1990):

In his opinion at the court below, Judge Gilley adopted the premise that, under Article 46, discovery available to the accused in courts-martial is broader than the discovery rights granted to most civilian defendants. From this, he correctly reasoned that, where prosecutorial misconduct is present or where the Government fails to disclose information pursuant to a specific request, the evidence will be considered “material unless failure to disclose” can be demonstrated to “be harmless beyond a reasonable doubt.”

22. Under R.C.M. 701, the trial counsel is required to automatically disclose evidence known to the trial counsel that reasonably tends to:

- (A) Negate the guilt of the accused of an offense charged;
- (B) Reduce the degree of guilt of the accused of an offense charged; or
- (C) Reduce the punishment.

R.C.M. 701(a)(6). *See generally United States v. Simmons*, 38 M.J. 376 (C.M.A. 1993) (accused prejudiced by nondisclosure of information by the government that tended to negate the guilt of the accused); *United States v. Sebring*, 44 M.J. 805 (N-M.C.C.A. 1997) (Government had obligation to search for favorable evidence in drug lab’s files which showed some mistakes in handling drug samples); *United States v. Kinzer*, 39 M.J. 559 (A.C.M.R. 1994) (error for Government to fail to disclose exculpatory evidence).

23. In addition to the requirement of the Government to disclose any and all evidence that is favorable to the accused, upon request by the Defense, the Government is also required to disclose materials that are within its possession, custody, or control. R.C.M. 701(a)(2)(A); *United States v. Meadows*, 42 M.J. 132 (C.A.A.F. 1995). The Government is obligated by law to turn over evidence in its possession, as well as to retrieve from other government agencies and entities outside of its immediate office relevant evidence upon a Defense request. *United States v. Williams*, 50 M.J. 436 (C.A.A.F. 1999). The Court of Appeals indicated that the scope of the Government's duty to discover and disclose information extends to items that are within the "government's control." *Id.* at 441.

24. The requirement under *Williams* means that the trial counsel has an affirmative obligation to seek out requested evidence that is in the possession of the Government even if that evidence is not already in its immediate possession. *Id.* Not only must the trial counsel search its core files within the case, the trial counsel must also search the files of law enforcement officials that have taken part in the investigation of the subject matter of the case. *Id.*; *United States v. Bryan*, 868 F.2d 1032, 1036 (9th Cir. 1989) (prosecutor will be deemed to have knowledge of and access to anything in the possession, custody, or control of any federal agency participating in the same investigation of the defendant). Additionally, the trial counsel must search investigative files in related cases maintained by "an entity 'closely aligned with' the prosecution." *Williams*, 50 M.J. at 441. Finally, the trial counsel must search other files designated in a Defense discovery request that identify a specified type of information in a specified file. *Id.* Here, the Government has been burying its head in the sand, claiming that it either has no knowledge of the existence of the damage assessments sought by the Defense, claiming that it has already disclosed the information, or claiming that the Defense is not entitled to receive this information. The significance of the damage assessments is self-evident and it is incredible that the Government could, in all seriousness, claim otherwise. The Government's repeated denial of discovery requests, using one of a variety of themes, is simply an attempt to avoid disclosing evidence that is favorable to the Defense. Such gamesmanship should not be countenanced. *United States v. Clark*, 37 M.J. 1098, 1103 (N.M.C.M.R. 1993) ("Courts-martial discovery practice has been quite liberal. It strives to eliminate 'gamesmanship.'").

25. The Defense unsuccessfully attempted to secure the below-requested information at the Article 32 hearing. Despite providing a specific request for this information and stating its relevancy for the Article 32, the IO failed to hold the Government to its discovery obligations. See R.C.M. 701(e) (stating that each party is entitled to obtain needed evidence); *Brady v. Maryland*, 373 U.S. 83 (1963); *United States v. Kern*, 22 M.J. 49, 51 (C.M.A. 1986). Instead, the IO simply adopted the assertions of the Government that the information was either not available or was not relevant to the form, truth, or disposition of the charges. It is important to note that the Defense requested a report prepared by the Department of Justice, the IO's civilian employer. Not surprisingly, the IO found that that Government was not required to produce this evidence, nor any of the other evidence that it been withholding from the Defense for well over a year.² The IO's ruling was simply a "cut and paste" job, repeating the Government's position on the Defense requested evidence. The IO's ruling did not take into account the right of the

² The position is even more indefensible if one considers that representatives of the various government agencies that were investigating the case and/or preparing damage reports were seated in the audience every day at PFC Manning's Article 32 hearing. And yet, the evidence was not required to be disclosed.

Defense to obtain evidence that is favorable to the accused. *See generally*, Army Regulation 27-26, paragraph 3.8(d); *United States v. Kinzer*, 39 M.J. 559, 562 (A.C.M.R. 1994); *United States v. Adens*, 56 M.J. 724 (A.C.C.A. 2002). Due to the IO's ruling, the Government was allowed to remain consciously ignorant of the presence of evidence favorable to the accused that was reasonably within its possession. *United States v. Williams*, 50 M.J. 436 (C.A.A.F. 1999); *United States v. Bryan*, 868 F.2d 1032, 1036 (9th Cir. 1989). This ruling frustrated the discovery purposes of the Article 32, and resulted in relevant information not be considered by either the IO or the Convening Authority.

26. The Government cannot have its cake and eat it too. It cannot charge a defendant with 22 specifications, comprising numerous legal elements, and then refuse to provide the Defense with the evidence it needs to mount a robust Defense. To date, the Government has had unfettered discretion in deciding what to make available to the Defense, when to make it available, and in what form. The Government should not be allowed to continue to act as the sole gatekeeper for what evidence is and is not relevant and what evidence will and will not be disclosed. *See* Article 46 of the UCMJ ("[t]he trial counsel, the defense counsel, and the court-martial shall have equal opportunity to obtain witnesses and other evidence"). The conduct of the Government in preventing the Defense from obtain needed discovery over the last 15 months discloses why judicial intervention is needed. The Defense requests that the Government be compelled to produce the above-mentioned discovery that is either in the Government's immediate possession or in a location which it has a duty to search.

CONCLUSION

27. Based on the above, and the *ex parte* submission by the Defense, the Defense requests that the Court order the Government to obtain the requested information and provide this information to the Defense.

Respectfully submitted,



DAVID EDWARD COOMBS
Civilian Defense Counsel

Attachment A

UNITED STATES

v.

MANNING, Bradley E., PFC

U.S. Army, xxx-xx-xx

Headquarters and Headquarters Company, U.S.

Army Garrison, Joint Base Myer-Henderson Hall,

Fort Myer, VA 22211

**DEFENSE REQUEST TO
PRESERVE EVIDENCE**

DATED: 19 January 2011


1. In accordance with the Rules for Courts-Martial (R.C.M.) 701(a) and (e), Manual for Courts-Martial, United States, 2008, Article 46, Uniform Code of Military Justice, and other applicable law, defense counsel in the above entitled case respectfully request that the U.S. Government preserve the confinement facility video tape of the alleged disruptive behavior of PFC Bradley Manning and provide a copy to the defense for its inspection.

2. On 18 January 2011, the defense was notified that PFC Manning, at the direction of CWO4 James Averhart, was placed in suicide prevention. This decision was made over the recommendations of Capt. William Hocter and the defense appointed expert Capt. Kevin Moore. When PFC Manning was being ordered to surrender his clothes, the Brig made the decision to videotape this event along with an interrogation of PFC Manning by CWO4 Averhart and others.

3. In accordance with R.C.M. 701(e), "[e]ach party shall have equal opportunity to ... inspect evidence." Defense counsel is requesting an equal opportunity to inspect the video tape. The defense believes this evidence will support a motion for credit for unlawful pretrial punishment under Article 13, Uniform Code of Military Justice (UCMJ).

4. Defense counsel respectfully request the Government preserve the video and provide a copy to the defense

5. A copy of this request was served on Trial Counsel by email on 19 January 2011.


DAVID EDWARD COOMBS
Civilian Defense Counsel

Attachment B



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
UNITED STATES ARMY CRIMINAL INVESTIGATION COMMAND
COMPUTER CRIME INVESTIGATIVE UNIT
WASHINGTON METRO RESIDENT AGENCY
9805 LOWEN ROAD, BUILDING 193
FORT BELVOIR, VIRGINIA 22060-5596

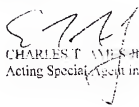
CISA-CCI-WM

30 Sep 2010

MEMORANDUM FOR Commander, 2d Brigade Combat Team (BCT), 10th Mountain Division,
Fort Drum, NY 13602

SUBJECT: Seizure of Government Computers and Related Equipment

1. This office is investigating the unauthorized disclosure of classified information and related offenses, which occurred while 2d BCT was deployed to Iraq. The investigation has identified numerous items of digital media that may hold evidence of the crime(s) or materially assist this investigation.
2. Agents from this office have seized and/or will seize items of classified and unclassified digital media such as servers, domain controllers, and hard drives believed to hold information pertinent to this investigation.
3. Should your staff identify any additional hard drives (classified or unclassified) used during the deployment to Iraq, I am informing you that these items represent potential evidence and must be preserved as such. Please inform me immediately should additional hard drives be found.
4. Agents will provide a receipt, DA Form 4137, Evidence/Property Custody Document for all items seized. This receipt may be used for inventory accountability purposes.
5. Most items collected as evidence should be processed and returned to you within the next few weeks. Please note, the supporting Trial Counsel may identify certain items of evidence that are required through the end of the trial.
6. Point of contact for this memorandum is the undersigned at commercial: (703) 805-2696, cell: (571) 480-2704, or email: Charles.arnes@us.army.mil.


CHARLES T. ARNES JR.
Acting Special Agent in Charge

Attachment C

UNITED STATES

v.

MANNING, Bradley E., PFC

U.S. Army, XXX-XX [REDACTED]

Headquarters and Headquarters Company, U.S.

Army Garrison, Joint Base Myer-Henderson Hall,

Fort Myer, VA 22211

DEFENSE REQUEST TO
PRESERVE EVIDENCE

DATED: 21 September 2011

1. In accordance with the Rules for Courts-Martial (R.C.M.) 701(a) and (e), Manual for Courts-Martial, United States, 2008, Article 46, Uniform Code of Military Justice, and other applicable law, defense counsel in the above entitled case respectfully request that the U.S. Government preserve all computer forensic evidence obtained in this case.
2. The Defense specifically requests that the Government preserve all the hard drives from the Tactical Sensitive Compartmented Information Facility (T-SCIF) and the Tactical Operations Center (TOC) of Headquarters and Headquarter Company (HHC), 2nd Brigade Combat Team (BCT), 10th Mountain Division, Forward Operating Base (FOB) Hammer, Iraq and provide an EnCase forensic image of each computer to the defense for its inspection. The defense also requests an EnCase forensic image of any other computer seized by the Government in this case.
3. In accordance with R.C.M. 701(e), "[e]ach party shall have equal opportunity to ... inspect evidence." Defense counsel is requesting an equal opportunity to inspect the hard drives from the T-SCIF and TOC of HHC, 2nd BCT, 10th Mountain Division, FOB Hammer, Iraq. The defense believes the requested evidence constitutes *Brady* material under *Brady v. Maryland*, 373 U.S. 83 (1963).
4. A copy of this request was served on Trial Counsel by e-mail on 21 September 2011.


DAVID EDWARD COOMBS
Civilian Defense Counsel

[Print](#) | [Close Window](#)

Subject: RE: [Suspected SPAM] RE: Preserve Evidence Request

From: coombs@armycourtartialdefense.com

Date: Thu, Sep 29, 2011 4:42 pm

To: "Fein, Ashden CPT USA JFHQ-NCR/MDW SJA" <Ashden.Fein@jfhqncr.northcom.mil>
"Matthew kemkes" <matthew.kemkes@us.army.mil>, "Tooman, Joshua J CPT MIL US
USA TRADOC" <joshua.tooman@us.army.mil>, paul.r.bouchard@us.army.mil,
"Morrow III, JoDean, CPT USA JFHQ-NCR/MDW SJA"
Cc: <JoDean.Morrow@jfhqncr.northcom.mil>, "Overgaard, Angel M. CPT USA JFHQ-
NCR/MDW SJA" <Angel.Overgaard@jfhqncr.northcom.mil>, "Ford, Arthur D. WO1
USA JFHQ-NCR/MDW SJA" <Arthur.Ford@jfhqncr.northcom.mil>, "Melissa Santiago"
<melissa.s.santiago@us.army.mil>, "Eric Lakes" <edl@cyberagentsinc.com>

Ashden,

Your understanding of the Defense request to preserve evidence is correct.

Best,
David

David E. Coombs, Esq.
Law Office of David E. Coombs
11 South Angell Street, #317
Providence, RI 02906
Toll Free: 1-800-588-4156
Local: (508) 689-4616
Fax: (508) 689-9282
coombs@armycourtartialdefense.com
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----- Original Message -----

Subject: RE: [Suspected SPAM] RE: Preserve Evidence Request

From: "Fein, Ashden CPT USA JFHQ-NCR/MDW SJA"

<Ashden.Fein@jfhqncr.northcom.mil>

Date: Thu, September 29, 2011 4:39 pm

To: <coombs@armycourt martialdefense.com>
Cc: "Matthew kemkes" <matthew.kemkes@us.army.mil>,
"Tooman, Joshua J CPT
MIL US USA TRADOC" <joshua.tooman@us.army.mil>,
<paul.r.bouchard@us.army.mil>, "Morrow III, JoDean, CPT USA JFHQ-
NCR/MDW
SJA" <JoDean.Morrow@jfhqncr.northcom.mil>, "Overgaard, Angel M.
CPT USA
JFHQ-NCR/MDW SJA" <Angel.Overgaard@jfhqncr.northcom.mil>, "Ford,
Arthur
D. WO1 USA JFHQ-NCR/MDW SJA"
<Arthur.Ford@jfhqncr.northcom.mil>,
"Melissa Santiago" <melissa.s.santiago@us.army.mil>, "Eric Lakes"
<edl@cyberagentsinc.com>

David,

Thanks for the chat this afternoon. To recap, you are requesting the preservation of the following items:

1. All SIPR hard drives in the TOC and SCIF of 2/10 MTN, regardless if they were seized or imaged
2. All EnCase forensic images of all computers seized by the United States

v/r
Ashden

-----Original Message-----

From: coombs@armycourt martialdefense.com
[<mailto:coombs@armycourt martialdefense.com>]
Sent: Thursday, September 29, 2011 8:08 AM
To: Fein, Ashden CPT USA JFHQ-NCR/MDW SJA
Cc: Matthew kemkes; Tooman, Joshua J CPT MIL US USA TRADOC;
paul.r.bouchard@us.army.mil; Morrow III, JoDean, CPT USA JFHQ-
NCR/MDW SJA;
Overgaard, Angel M. CPT USA JFHQ-NCR/MDW SJA; Ford, Arthur D.
WO1 USA
JFHQ-NCR/MDW SJA; Melissa Santiago; Eric Lakes
Subject: RE: [Suspected SPAM] RE: Preserve Evidence Request
Importance: Low

Ashden,

I am available between 1200 and 1300 or anytime after 1600 today.

Best,
David

David E. Coombs, Esq.

Law Office of David E. Coombs
11 South Angell Street, #317
Providence, RI 02906
Toll Free: 1-800-588-4156
Local: (508) 689-4616
Fax: (508) 689-9282
coombs@armycourt martialdefense.com
www.armycourt martialdefense.com

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----- Original Message -----

Subject: RE: [Suspected SPAM] RE: Preserve Evidence Request
From: "Fein, Ashden CPT USA JFHQ-NCR/MDW SJA" <Ashden.Fein@jfhqncr.northcom.mil>
Date: Wed, September 28, 2011 5:08 pm
To: <coombs@armycourt martialdefense.com>
Cc: "Matthew kemkes" <matthew.kemkes@us.army.mil>, "Tooman, Joshua J CPT MIL US USA TRADOC" <joshua.tooman@us.army.mil>, <paul.r.bouchard@us.army.mil>, "Morrow III, JoDean, CPT USA JFHQ-NCR/MDW SJA" <JoDean.Morrow@jfhqncr.northcom.mil>, "Overgaard, Angel M. CPT USA JFHQ-NCR/MDW SJA" <Angel.Overgaard@jfhqncr.northcom.mil>, "Ford, Arthur D. WO1 USA JFHQ-NCR/MDW SJA" <Arthur.Ford@jfhqncr.northcom.mil>, "Melissa Santiago" <melissa.s.santiago@us.army.mil>, "Eric Lakes" <edl@cyberagentsinc.com>

David,

Are you available to discuss this request over the telephone?

Thanks.

v/r
Ashden

-----Original Message-----

From: coombs@armycourtartialdefense.com
[<mailto:coombs@armycourtartialdefense.com>]
Sent: Friday, September 23, 2011 10:09 AM
To: Fein, Ashden CPT USA JFHQ-NCR/MDW SJA
Cc: Matthew kemkes; Tooman, Joshua J CPT MIL US USA TRADOC;
paul.r.bouchard@us.army.mil; Morrow III, JoDean, CPT USA JFHQ-NCR/MDW SJA;
Overgaard, Angel M. CPT USA JFHQ-NCR/MDW SJA; Ford, Arthur D. WO1 USA
JFHQ-NCR/MDW SJA; Melissa Santiago; Eric Lakes
Subject: [Suspected SPAM] RE: Preserve Evidence Request
Importance: Low

Ashden,

The defense request is for all hard drives that were located within the T-SCIF and the TOC.

Best,
David

David E. Coombs, Esq.
Law Office of David E. Coombs
11 South Angell Street, #317
Providence, RI 02906
Toll Free: 1-800-588-4156
Local: (508) 689-4616
Fax: (508) 689-9282
coombs@armycourtartialdefense.com
www.armycourtartialdefense.com

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----- Original Message -----

Subject: RE: Preserve Evidence Request
From: "Fein, Ashden CPT USA JFHQ-NCR/MDW SJA"
<Ashden.Fein@jfhqncr.northcom.mil>
Date: Thu, September 22, 2011 6:08 pm

To: <coombs@armycourt martialdefense.com>
Cc: "Matthew kemkes" <matthew.kemkes@us.army.mil>,
"Tooman, Joshua J CPT
MIL US USA TRADOC" <joshua.tooman@us.army.mil>,
<paul.r.bouchard@us.army.mil>, "Morrow III, JoDean, CPT USA JFHQ-
NCR/MDW
SJA" <JoDean.Morrow@jfhqncr.northcom.mil>, "Overgaard, Angel M.
CPT USA
JFHQ-NCR/MDW SJA" <Angel.Overgaard@jfhqncr.northcom.mil>, "Ford,
Arthur
D. WO1 USA JFHQ-NCR/MDW SJA"
<Arthur.Ford@jfhqncr.northcom.mil>,
"Melissa Santiago" <melissa.s.santiago@us.army.mil>, "Eric Lakes"
<edl@cyberagentsinc.com>

David,

Could you please clarify your request. Are you asking to have ALL
harddrives
that were located in the TSCIF and TOC or only those that were
collected by
CID and had EnCase forensic images produced? Thank you.

v/r

Ashden

-----Original Message-----

From: coombs@armycourt martialdefense.com
[mailto:coombs@armycourt martialdefense.com]
Sent: Wednesday, September 21, 2011 1:52 PM
To: Fein, Ashden CPT USA JFHQ-NCR/MDW SJA
Cc: Matthew kemkes; Tooman, Joshua J CPT MIL US USA TRADOC;
paul.r.bouchard@us.army.mil; Morrow III, JoDean, CPT USA JFHQ-
NCR/MDW SJA;
Overgaard, Angel M. CPT USA JFHQ-NCR/MDW SJA; Ford, Arthur D.
WO1 USA
JFHQ-NCR/MDW SJA; Melissa Santiago; Eric Lakes
Subject: Preserve Evidence Request

Ashden,

Please see the attached request.

Best,
David

David E. Coombs, Esq.
Law Office of David E. Coombs
11 South Angell Street, #317
Providence, RI 02906

Toll Free: 1-800-588-4666

Local: (508) 689-4616

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Attachment D

UNITED STATES)

v.)

MANNING, Bradley E., PFC)

U.S. Army. xxx-xx)

Headquarters and Headquarters Company, U.S.)

Army Garrison, Joint Base Myer-Henderson Hall,)

Fort Myer, VA 22211)

**DEFENSE DISCOVERY
REQUEST**

DATED: 29 October 2010

1. In accordance with the Rules for Courts-Martial and the Military Rules of Evidence, Manual for Courts-Martial, United States, 2008, Article 46, Uniform Code of Military Justice, and other applicable law, request for discovery is hereby made for the charged offenses in the case of United States v. Bradley E. Manning.

a. A copy of any handwritten, typed or recorded statements by the accused or any other potential witness in connection with the investigation of this case made to representatives of the government to include summaries of conversations with representatives of the government, which were not attached as allied papers at the time the charges were preferred.

b. The contents of all statements, oral or written, made by the accused that are relevant to the case, known to the trial counsel, and within control of the armed forces. The defense specifically requests that any statement made by the accused that the trial counsel intends to introduce into evidence be reduced to writing and disclosed to the defense. The defense needs these statements in written form in order to prepare motions to suppress under M.R.E. 304(d)(2)(a). The defense also requests any derivative evidence be disclosed to the defense IAW M.R.E. 304(d)(2)(c). *Specifically, defense requests the complete Instant Message chat log and any emails allegedly sent between PFC Manning and Mr. Adrian A. Lamo.

c. Disclosure of all evidence seized from the person or property of the accused, whether believed to be owned by the accused or anyone else, that the prosecution intends to offer into evidence against the accused at trial. *Specifically, defense requests the results of any examination of computers allegedly used or owned by PFC Manning, and for the government to make the hard drives from these computers accessible to the defense computer forensic expert Mr. Eric Lakes of Cyber Agents Inc., 128 Southland Drive, Lexington, Kentucky, 40503.

d. Copies of all medical and mental reports relating to the accused.

*Specifically, the defense requests copies of any behavioral health assessments of PFC Manning both before, during, and after the deployment to Iraq.

e. Any known evidence tending to diminish credibility of any witness including, but not limited to, prior convictions under M.R.E. 609, evidence of other character, conduct, or bias bearing on witness credibility under M.R.E. 608. Specifically, the defense requests the name and contact information for any law enforcement agent working with Mr. Adrian A. Iamo. See *Brady v. Maryland*, 373 U.S. 83 (1963); *United States v. Agurs*, 427 U.S. 97 (1976). The defense also requests any other evidence in the possession of the government favorable to the accused, or tends to negate the guilt of the accused of any offense charged, or reduce the punishment for any offense charged.

f. The names and contact information for all government investigators who have participated or are presently participating in the investigation of the case.

g. Any evidence of other crimes, wrongs, or acts which the prosecution seeks to introduce for any purpose whatsoever. See M.R.E. 404(b).

h. All personal or business notes, memorandums, and writings prepared by investigators in said case which are not furnished pursuant to any other provisions of this request.

i. The military status of all witnesses. Where applicable, the defense requests the date of separation from the Army, and the discharge provisions used to effect such discharge if for other than completion of the obligated term of service. Pursuant to M.R.E. 301(c)(2), disclosure is requested of any immunity or leniency pertaining to witnesses or potential witnesses.

j. The Tactical Sensitive Compartment Information (T-SCIF) accreditation packet for FOB Hammer. The SOP for the T-SCIF at FOB Hammer. The name and contact information for the security manager at the T-SCIF at FOB Hammer. A copy of the Security Classification Guide (SCG) for the T-SCIF at FOB Hammer. PFC Manning's training records related to his MOS. Any documentation PFC Manning has signed dealing with information security. A list of any refresher training or in-country training PFC Manning has received on information security.

k. Any evidence of prior Article 15 action, civilian or military convictions, and adverse administrative actions relating to any of the government's

witnesses, defense witnesses, or the accused. Any evidence that the government intends to use for impeachment purposes of the accused, or any other witness. This includes any character evidence the government intends to introduce at trial under M.R.E. 404.

l. A list of all witnesses the prosecution intends to call during the Article 32 along with their addresses and phone numbers and copies of all prior written statements.

m. Copies of all business and official records which the prosecution intends to introduce either during the Article 32 or at trial.

n. A list of all exhibits the government plans to utilize at the Article 32 or at trial.

o. Any evidence, testimony, or witnesses the government intends to use at the Article 32 or at trial that have been obtained through grants of immunity, or any other concessions being granted to a witness, the content of such testimony or evidence, and the terms of any such grants of immunity or concessions.

p. All documents, memoranda, or records of conversations pertaining to this case, whether prepared by investigators, commanders, convening authority or any other person. The request in this paragraph includes but is not limited to:

(1) A complete copy of the CID file(s) (including but not limited to the so-called "right" and "left side") interviews, notes, and Agent Activity Summaries or any other files maintained by a law enforcement agency at Fort Myer, Fort Drum, Contingency Operating Station Hammer, or any other installation that participated in the investigation of this case.

(2) A complete copy of any other documents or files pertaining to the above named individual.

(3) A complete copy of any emails or memorandums relating to the referral of charges in this case or to the level of court-martial.

q. Any writings used to refresh the memory of any government witness, IAW M.R.E. 612.

r. Copies of the report concerning the polygraph examinations administered to any person related to this case. This includes copies of statements taken after the polygraph exam.

- s. A copy of any Freedom of Information Act (FOIA) request and any response or internal discussions of any such FOIA request that is related to the classified video charged in Specification 1, Charge I and Specification 1, 2, and 5 of Charge II.
2. The defense requests that the government informs the defense counsel if it does not intend to comply with any specific provision of this request.
3. It is understood that this is a continuing request.
4. A copy of this request was served on Trial Counsel by email on 29 October 2010.



DAVID EDWARD COOMBS
Civilian Defense Counsel

UNITED STATES)

v.)

**DEFENSE DISCOVERY
REQUEST**

MANNING, Bradley E., PFC)

U.S. Army, xxx-xx-xx)

Headquarters and Headquarters Company, U.S.)

Army Garrison, Joint Base Myer-Henderson Hall.)

Fort Myer, VA 22211)

DATED: 15 November 2010

1. In accordance with the Rules for Courts-Martial and the Military Rules of Evidence, Manual for Courts-Martial, United States, 2008, Article 46, Uniform Code of Military Justice, and other applicable law, request for supplemental discovery is hereby made for the charged offenses in the case of United States v. Bradley E. Manning.

2. The defense requests that the government respond to each item listed in its 29 October 2010 discovery request and the following additional discovery:

a. The names and contact information for all government investigators who have participated or who are presently participating in the investigation of the case, previously requested on 29 October 2010. Specifically, the names of the investigators and an inventory of the items seized from the home of Ms. Debra Van Alstyne, 1492 Selworthy Road, Potomac, MD 20854 on 2 November 2010. Additionally, a list of items seized from Mr. David House and a copy of all reports or analysis of the items seized by the Department of Homeland Security, the Federal Bureau of Investigation (FBI), or any other government agency on 3 November 2010. Finally, a copy of all field interviews and reports conducted by the FBI or any other governmental organization involving witnesses from Boston, Massachusetts or any other city from 24 May 2010 to the present involved in this case.

b. The entire counseling packet for PFC Manning. Specifically, any counseling or assessments done of PFC Manning by his chain of command, MSG Paul Adkins, CPT Casey Martin, SSG Peter Bigelow, CPT Matthew Freeburg, or 1SG Mark Woodworth.

c. All Behavioral Health Assessments (BHA) or mental evaluations of PFC Manning, previously requested by the defense on 29 October 2010. The defense requests any assessment by CAPT Kenneth J. Iverson, CAPT Bruce Balfour, CAPT William Hocter, CPT Eden Critchfield, CPT Dale Hill or any other individual who has evaluated or commented on PFC Manning's mental state at any time. Specifically, the defense requests the 22 May and 28 May

2010 BHA, and all assessments for POI recommendations to the Quantico Confinement Facility.


- d. Any and all documents or emails considered by CPT Kevin Ley as the military magistrate to support his search and seizure authorizations.
- e. Recorded video footage of when PFC Manning collapsed in confinement as referenced at 000095 and any other recorded audio or video footage of PFC Manning while in confinement either in Iraq, Kuwait, or the United States.
- f. Network logs for all computers searched by CPT Thomas Cherepko or any other government employee or investigator as referenced at 000186-87.
- g. The application, Security and System Network logs obtained from PFC Blake Dudley as referenced at 0000187.
- h. The results of SA Calder L. Robertson III and SA David S Shaver's analysis of any computers analyzed in this case as well as copies of any investigative notes or assessments by Computer Crimes Investigative Unit (CCIU). Additionally, the names of all individuals from the CCIU or any other government agency that have performed or are performing any computer forensic analysis in this case.
- i. All documentation or information provided by the government to LTC Craig Merutka. Specifically, copies of the chat logs referenced at 000455 and copies of the CCIU reports referenced at 000463.
- j. The results of inquiry/investigation and all discussions and assessments done in compliance with Department of Defense (DoD) Directive 5210.50, DoD Directive 5200.1 Chapter 10, DoD S-5105.21-M-1, DoD Instruction 5240.4, and Executive Order 13526. Specifically, the defense requests the answers to the following required investigative determinations by the above DoD Directives, Instruction, and Executive Order: When, where, and how did the incident occur? What persons, situations, or conditions caused or contributed to the incident? What classified information was compromised? If a compromise occurred, what specific classified information and/or material was involved? If classified information is alleged to have been lost, what steps were taken to locate the material? In what specific media article or program did the classified information appear? To what extent was the compromised information disseminated? Was the information properly classified? Was the information officially released? Are there any leads to be investigated that might lead to identification of the person(s) responsible for the compromise?

k. The defense also requests copies of any notification to the Original Classification Authorities (OCA), the contact information for the OCAs, and the required answers by DoD Directive that states when notified of the compromise of classified information or material, the original classification authority for that information or material shall: Verify the classification and duration of classification initially assigned to the information; Reevaluate the classification of the information to determine whether the classification should be continued or changed; and complete a damage assessment in accordance with DoD Instruction and Directive. The verification, reevaluation and damage assessment process is required by DoD Directive to be completed as soon as possible following notification of a compromise.

3. The defense requests that the government informs the defense counsel if it does not intend to comply with any specific provision of this request.

4. It is understood that this is a continuing request.

5. A copy of this request was served on Trial Counsel by email on 15 November 2010.



DAVID EDWARD COOMBS
Civilian Defense Counsel

UNITED STATES

v.

MANNING, Bradley E., PFC

U.S. Army, xxx-xx-xx

Headquarters and Headquarters Company, U.S.

Army Garrison, Joint Base Myer-Henderson Hall,

Fort Myer, VA 22211

**DEFENSE DISCOVERY
REQUEST**

DATED: 8 December 2010

1. In accordance with the Rules for Courts-Martial and the Military Rules of Evidence, Manual for Courts-Martial, United States, 2008, Article 46, Uniform Code of Military Justice, and other applicable law, request for supplemental discovery is hereby made for the charged offenses in the case of United States v. Bradley E. Manning.

2. The defense requests that the government respond to each item listed in its 29 October and 15 November 2010 discovery requests and the following additional discovery:

a) The names and contact information for all government investigators who have participated or who are presently participating in the investigation of the case, previously requested on 29 October and 15 November 2010. Specifically, contact information for SA Hyung Kim from the Department of Defense and SA Richard Bowen from the Army Computer Crimes Unit and an inventory of the items seized from the home of Mr. Paul Francia at 601 Hazelwood Terrace, Rochester, New York 14609.

b) All forensic results and investigative reports by the Department of State regarding the information obtained by Wikileaks as referenced by Assistant Secretary of State for Public Affairs P.J. Crowley. Additionally, any specific damage assessment by the Department of State regarding the disclosures of the diplomatic cables by Wikileaks. Any assessment, report, e-mail, or document by Secretary of State Hillary Rodham Clinton regarding the disclosures of diplomatic cables by Wikileaks. Any report, e-mail, or document discussing the need for the State Department to disconnect access to its files from the government's classified network.

c) All forensic results and investigative reports by the Department of Defense regarding the information obtained by Wikileaks and the results of any joint investigation with the Federal Bureau of Investigation (FBI) as referenced by Secretary of Defense Robert M. Gates. Additionally, any specific damage assessment by the Department of Defense regarding the disclosure of classified documents and videos, the subject of this case, by Wikileaks.

- d) Any and all documentation related to the Department of Justice investigation into the alleged leaks by WikiLeaks as referenced by Attorney General of the United States Eric H. Holder.
- e) Any and all documentation related to President Barack H. Obama's order for an investigation and a government wide-review of how agencies safeguard sensitive information. Additionally, any and all documents related to the steps the administration is considering regarding these leaks and the nature of the criminal investigation underway into how the documents were made public as referenced by Robert Gibbs, the White House spokesman.
- f) Any assessment given, or discussions concerning, the Wikileaks disclosures by any member of the government to President Obama. Any e-mail, report, assessment, directive, or discussion by President Obama to the Department of Defense, Department of State or Department of Justice.
- g) Any and all documents relating to the Government Task Force created to review the various WikiLeaks releases for potentially damaging information prior to the actual releases. This Task Force apparently had over 120 members reviewing the documents that were either released or pending release to determine the possible harm to national security.
- h) The results of any investigation or review by Mr. Russell Travers who has been appointed by President Obama to head an interagency committee assigned to assess the damage caused WikiLeaks exposures and to organize efforts to tighten security measures in government agencies.
- i) Any and all documentation related to the Pentagon's review on the policy and technological shortfalls that led to the WikiLeaks disclosures as referenced by Pentagon spokesman Bryan Whitman.
- j) Any and all documentation related to the Central Intelligence Agency (CIA) investigation of Wikileaks announced by CIA Director Leon Panetta and any internal or external memorandums addressing the investigation of Wikileaks, PFC Bradley Manning or the nature of the Office of Security's investigation into these matters.
- k) Any and all documentation relating to the government's position of taking a hard line on unauthorized leaks of information, as demonstrated by the prosecutions of a former National Security Agency official, a Federal Bureau of Investigation linguist, and a State Department contractor and referenced by CIA Director Leon Panetta. Additionally, any and all memorandums, e-mails, or other references by Congressmen, Senators, or government officials concerning the disposition of this case or the need to punish PFC Bradley Manning.

l) Any and all documentation, e-mails, or reports given to the Summary Court-Martial Convening Authority, the General Court-Martial Convening Authority, or the Staff Judge Advocate concerning the disposition of PFC Bradley Manning's case or the nature of the charges or possible charges against PFC Manning. Specifically, any attempt to influence the independent discretion of anyone involved in the military justice process.

m) Any and all documents or observation notes by employees of the Quantico confinement facility relating to PFC Bradley Manning.

n) The results of the 15-6 investigation into the government's improper release of classified information to the defense. Whether the 15-6 investigating officer looked into the following additional potential spillage:

i. The disc allegedly found in PFC Manning's Room indicated the contents were SECRET. A photo of the disk can be found at 000293. Was the title on the disk classified or not?

ii. The photos of the T-SCIF show a map in the background that was partially exposed (000301 and 000302).

iii. The snapshots of the computer screens in the T-SCIF were exposed. Was there classified information being viewed on the screen? (000305 and 000306).

iv. The snapshots of the computers had documentation on the table appear to show classified information. (000333, 000334, and 000335).

v. Was the investigating officer made aware of the government disclosure of the original five discs to the military defense counsel?

3. The defense requests that the government inform the defense counsel if it does not intend to comply with any specific provision of this request.

4. It is understood that this is a continuing request.

5. A copy of this request was served on Trial Counsel by e-mail on 8 December 2010.


DAVID EDWARD COOMBS
Civilian Defense Counsel

UNITED STATES

v.

MANNING, Bradley E., PFC

U.S. Army, xxx-xx- [REDACTED]

Headquarters and Headquarters Company, U.S.

Army Garrison, Joint Base Myer-Henderson Hall,

Fort Myer, VA 22211

**DEFENSE DISCOVERY
REQUEST**

DATED: 10 January 2011

1. In accordance with the Rules for Courts-Martial and the Military Rules of Evidence, Manual for Courts-Martial, United States, 2008, Article 46, Uniform Code of Military Justice, and other applicable law, request for supplemental discovery is hereby made for the charged offenses in the case of United States v. Bradley E. Manning.

2. The defense requests that the government respond to each item listed in its previous discovery requests on 29 October, 15 November, and 8 December 2010 and to also respond to the following additional discovery:

a) Any information relating to 18 U.S.C. § 2703(d) order or any search warrant by the government of Twitter, Facebook, Google or any other social media site. Any metadata, MD5 hash marks or other unique identifying information obtained from the 2703(d) order or search warrant.

b) The results and all supporting documents for the investigation conducted by LTG Robert Caslen Jr. The report is directed by the Secretary of the Army John McHugh and is supposed to be completed by 1 February 2011. It will address how PFC Bradley Manning was selected for his job, how he was trained, whether his superiors missed warning signs that he was downloading documents that he did not need to read and how PFC Manning allegedly released the documents.


c) Results of any inquiry and testimony taken by House of Representative oversight committee led by Representative Darrell Issa. The committee is due to look into Wikileaks, the actions of Attorney General Eric Holder, and the investigation of PFC Bradley Manning.

d) A copy of all Agents Investigation Reports maintained under CID Regulation 195-1 not previously provided to the defense. A copy of all agent notes, other governmental investigative reports, and sworn statements.

3. The defense requests that the government inform the defense counsel if it does not intend to comply with any specific provision of this request.

4. It is understood that this is a continuing request.

5. A copy of this request was served on Trial Counsel by e-mail on 10 January 2011.



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UNITED STATES

v.

MANNING, Bradley E., PFC

U.S. Army. xxx-xx

Headquarters and Headquarters Company, U.S.

Army Garrison, Joint Base Myer-Henderson Hall,


Fort Myer, VA 22211

DEFENSE DISCOVERY
REQUEST

DATED: 16 February 2011

1. In accordance with the Rules for Courts-Martial and the Military Rules of Evidence, Manual for Courts-Martial, United States, 2008, Article 46, Uniform Code of Military Justice, and other applicable law, request for supplemental discovery is hereby made for the charged offenses in the case of United States v. Bradley E. Manning.
2. The defense requests that the government respond to each item listed in its previous discovery requests on 29 October, 15 November, 8 December 2010, and 10 January 2011 and to also respond to the following additional discovery:
 - a) The defense team has learned that a number of soldiers at Fort Drum have received a DoD imposed flag as a result of investigations into the alleged leak by PFC Manning. The defense requests the names of the soldiers who have been flagged, the nature for why they were flagged, who imposed the flag, and any other derogatory information relating to this case to include, but not limited to: any reprimand (oral or written), UCMJ action, or administrative separation actions.
 - b) The defense team has learned that Army CID has audio surveillance of the first visitation booth immediately adjacent to the control room where we meet with PFC Manning. This appears to be the booth where attorney-client visits take place. The defense requests a copy of any and all audio or video tapes of PFC Manning at any time whether they be from in person visits or from telephonic conversations.
 - c) A copy of the latest CID investigation report and all Agents Investigation Reports maintained under CID Regulation 195-1 not previously provided to the defense. Additionally, a copy of all agent notes, other governmental investigative reports, and sworn statements.
 - d) A roster of all individuals assigned to HIIC, 2BCT, 10th Mtn Division, specifically any soldier assigned in the S2 Section of 2BCT. The defense requests full name, rank, email and phone contact information for each individual.
 - e) Access to all classified information that the government intends to use in this case. To include any damage assessment or information review conducted by any governmental agency or at the direction of a governmental agency.

3. The defense requests that the government inform the defense counsel if it does not intend to comply with any specific provision of this request.
4. It is understood that this is a continuing request.
5. A copy of this request was served on Trial Counsel by e-mail on 16 February 2011.



DAVID EDWARD COOMBS
Civilian Defense Counsel

Attachment E



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
U.S. ARMY MILITARY DISTRICT OF WASHINGTON
210 A STREET
FORT LESLEY J. MCNAIR, DC 20319-5013

ANJA-CL

12 April 2011

MEMORANDUM FOR Mr. David E. Coombs, Civilian Defense Counsel

SUBJECT: Response to Defense Request for Discovery, 29 October 2010 – U.S. v. PFC Bradley Manning

1. The responses provided in this discovery request account for the ongoing national security concerns of this case and the ongoing law enforcement investigation(s), and responds under the limitations of applicable Executive Orders. The United States acknowledges its requirements under Article 46, UCMJ, the Rules for Courts-Martial, and relevant case law.

2. Discovery Response.

a. A copy of any handwritten, typed or recorded statements by the Accused or any other potential witness in connection with the investigation of this case made to representatives of the government to include summaries of conversations with representatives of the government, which were not attached as allied papers at the time the charges were preferred. *See* Discovery Request, paragraph 1(a).

RESPONSE: The United States has provided a portion of this information and understands its continuing obligation to provide information responsive to this request.

b. The contents of all statements, oral or written, made by the Accused that are relevant to the case, known to the trial counsel, and within control of the armed forces. *See* Discovery Request, paragraph 1(b).

RESPONSE: The United States has provided a portion of this information and understands its continuing obligation to provide information responsive to this request.

c. Any statement made by the Accused that the trial counsel intends to introduce into evidence, reduced into writing and disclosed. M.R.E. 304(d)(2)(a). *See* Discovery Request, paragraph 1(b).

RESPONSE: The United States has provided a portion of this information and understands its continuing obligation to provide information responsive to this request.

d. Any derivative evidence of the Accused's statements. M.R.E. 304(d)(2)(c). Specifically, the complete Instant Message chat log and any emails allegedly sent between the Accused and Mr. Adrian A. Lamo. *See* Discovery Request, paragraph 1(b).

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RESPONSE: The United States has provided a portion of this information and understands its continuing obligation to provide information responsive to this request.

e. Disclosure of all evidence seized from the person or property of the Accused, whether believed to be owned by the Accused or anyone else that the prosecution intends to offer into evidence against the Accused at trial. *See* Discovery Request, paragraph 1(c).

RESPONSE: The United States has provided a portion of this information and understands its continuing obligation to provide information responsive to this request.

f. The results of any examination of computers allegedly used or owned by PFC Manning. *See* Discovery Request, paragraph 1(c).

RESPONSE: The United States does not presently have the authority to disclose this classified information and will make a determination whether to provide the information if and when it becomes available.

g. Copies of all medical and mental reports relating to the Accused. Specifically, the defense requests copies of any behavioral health assessments of PFC Manning both before, during, and after the deployment to Iraq. *See* Discovery Request, paragraph 1(d).

RESPONSE: The United States has provided all matters requested that are in its possession and understands its continuing obligation to provide information responsive to this request.

h. Any known evidence tending to diminish the credibility of any witness including, but not limited to, prior convictions under M.R.E. 609, or evidence of other character, conduct, or bias bearing on witness credibility under M.R.E. 608. *See* Discovery Request, paragraph 1(e).

RESPONSE: The United States has provided all matters requested that are in its possession and understands its continuing obligation to provide information responsive to this request.

i. The name and contact information for any law enforcement agent working with Mr. Adrian A. Lamo. *See* Brady v. Maryland, 373 U.S. 83 (1963); United States v. Agurs, 427 U.S. 97 (1976). *See* Discovery Request, paragraph 1(e).

RESPONSE: The United States has provided a portion of this information and understands its continuing obligation to provide information responsive to this request.

j. Any other evidence in the possession of the government favorable to the Accused, tending to negate the guilt of the Accused of any offense charged, or reduce the punishment for any offense charged. *See* Discovery Request, paragraph 1(e).

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SUBJECT: Response to Defense Request for Discovery, 29 October 2010 – U.S v. PFC Bradley Manning

RESPONSE: The United States has provided a portion of this information and understands its continuing obligation to provide information responsive to this request.

k. The names and contact information for all government investigators who have participated or who are presently participating in the investigation of the case. *See* Discovery Request, paragraph 1(f).

RESPONSE: The United States has provided a portion of this information and understands its continuing obligation to provide information responsive to this request.

l. Any evidence of other crimes, wrongs, or acts which the prosecution seeks to introduce for any purpose whatsoever. M.R.E. 404(b). *See* Discovery Request, paragraph 1(g).

RESPONSE: The United States has provided all matters requested that are in its possession and understands its continuing obligation to provide information responsive to this request.

m. All personal or business notes, memorandums, and writings prepared by investigators in the case which are not furnished pursuant to any other provisions of this request. *See* Discovery Request, paragraph 1(h).

RESPONSE: The United States will not provide the requested information. The defense has failed to provide any basis for its request. The United States will reconsider this request when provided with an authority that obligates the United States to provide the requested information.

n. The military status of all witnesses. Where applicable, the defense requests the date of separation from the Army, and the discharge provisions used to effect such discharge if for other than completion of the obligated term of service. M.R.E 301(c)(2). *See* Discovery Request, paragraph 1(i).

RESPONSE: The United States has provided all matters requested that are in its possession and understands its continuing obligation to provide information responsive to this request.

o. The Tactical Sensitive Compartment Information (T-SCIF) accreditation packet for FOB Hammer. *See* Discovery Request, paragraph 1(j).

RESPONSE: The United States presently has no knowledge of any such records. The United States will make a determination whether to provide the information if and when it becomes aware of such records.

p. The SOP for the T-SCIF at FOB Hammer. *See* Discovery Request, paragraph 1(j).

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RESPONSE: The United States presently has no knowledge of any such records. The United States will make a determination whether to provide the information if and when it becomes aware of such records.

q. The name and contact information for the security manager at the T-SCIF at FOB Hammer. *See* Discovery Request, paragraph 1(j).

RESPONSE: 1LT Elizabeth Fields was the Special Security Representative (SSR). The United States understands its continuing obligation to provide information responsive to this request.

r. A copy of the security classification guide for the Tactical Sensitive Compartment Information (T-SCIF) at FOB Hammer. *See* Discovery Request, paragraph 1(j).

RESPONSE: The United States has provided all matters requested that are in its possession and understands its continuing obligation to provide information responsive to this request.

s. PFC Manning's training records related to his MOS. *See* Discovery Request, paragraph 1(j).

RESPONSE: The United States has provided all matters requested that are in its possession and understands its continuing obligation to provide information responsive to this request.

t. Any documentation PFC Manning has signed dealing with information security. *See* Discovery Request, paragraph 1(j).

RESPONSE: The United States has provided a portion of this information and understands its continuing obligation to provide information responsive to this request.

u. A list of any refresher training or in-country training PFC Manning received on information security. *See* Discovery Request, paragraph 1(j).

RESPONSE: The United States has provided all matters requested that are in its possession and understands its continuing obligation to provide information responsive to this request.

v. Any evidence of prior Article 15 action, civilian or military convictions, and adverse administrative actions relating to any of the government's witnesses, defense witnesses, or the Accused. *See* Discovery Request, paragraph 1(k).

RESPONSE: The United States has provided all matters requested that are in its possession and understands its continuing obligation to provide information responsive to this request.

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SUBJECT: Response to Defense Request for Discovery, 29 October 2010 – U.S v. PFC Bradley Manning

w. Any evidence that the government intends to use for impeachment purposes of the Accused, or any other witness. This includes any character evidence the government intends to introduce at trial under M.R.E. 404. *See* Discovery Request, paragraph 1(k).

RESPONSE: The United States has provided all matters requested that are in its possession and understands its continuing obligation to provide information responsive to this request.

x. A list of all witnesses the prosecution intends to call during the Article 32 along with their addresses and phone numbers and copies of all prior written statements. *See* Discovery Request, paragraph 1(l).

RESPONSE: The United States will provide this information in a separate document prior to the Article 32 investigation.

y. Copies of all business and official records which the prosecution intends to introduce either during the Article 32 or at trial. *See* Discovery Request, paragraph 1(m).

RESPONSE: The United States will provide this information in a separate document prior to the Article 32 investigation.

z. A list of all exhibits the government plans to utilize at the Article 32 or at trial. *See* Discovery Request, paragraph 1(n).

RESPONSE: The United States will provide this information in a separate document prior to the Article 32 investigation.

aa. Any evidence, testimony, or witnesses the government intends to use at the Article 32 or at trial that have been obtained through grants of immunity, or any other concessions being granted to a witness, the content of such testimony or evidence, and the terms of any such grants of immunity or concessions. *See* Discovery Request, paragraph 1(o).

RESPONSE: The United States will disclose such evidence, testimony, or witnesses if and when immunity or leniency is granted to a witness.

bb. All documents, memoranda, or records of conversations pertaining to this case, whether prepared by investigators, commanders, convening authority or any other person. *See* Discovery Request, paragraph 1(p).

RESPONSE: The United States will not provide the requested information. The defense has failed to provide any basis for its request. The United States will reconsider this request when provided with an authority that obligates the United States to provide the requested information.

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cc. A complete copy of the CID file(s) (including but not limited to the so called "right" and "left side") interviews, notes, and Agent Activity Summaries or any other files maintained by a law enforcement agency at Fort Myer, Fort Drum, Contingency Operating Station Hammer, or any other installation that participated in the investigation of this case. *See* Discovery Request, paragraph 1(p)(1).

RESPONSE: The United States has provided a portion of this information and understands its continuing obligation to provide information responsive to this request.

dd. A complete copy of any other documents or files pertaining to the above named individual. *See* Discovery Request, paragraph 1(p)(2).

RESPONSE: The United States will not provide the requested information. The defense has failed to provide any basis for its request. The United States will reconsider this request when provided with an authority that obligates the United States to provide the requested information.

ee. A complete copy of any emails or memorandums relating to the preferral of charges in this case or to the level of court-martial. *See* Discovery Request, paragraph 1(p)(3).

RESPONSE: The United States has provided a portion of this information and understands its continuing obligation to provide information responsive to this request.

ff. Any writings used to refresh the memory of any government witness. MRE 612. *See* Discovery Request, paragraph 1(q).

RESPONSE: The United States presently has no knowledge of any such records. The United States will make a determination whether to provide the information if and when it becomes aware of such records.

gg. Copies of the report concerning the polygraph examinations administered to any person related to this case. This includes copies of statements taken after the polygraph exam. *See* Discovery Request, paragraph 1(r).

RESPONSE: The United States presently has no knowledge of any such records. The United States will make a determination whether to provide the information if and when it becomes aware of such records.

hh. A copy of any Freedom of Information Act (FOIA) request and any response or internal discussions of any such FOIA request that is related to the classified video charged in Specification 1, Charge I and Specification 1, 2, and 5 of Charge II. *See* Discovery Request, paragraph 1(s).

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SUBJECT: Response to Defense Request for Discovery, 29 October 2010 – U.S v. PFC Bradley Manning

RESPONSE: The United States has provided a portion of this information and understands its continuing obligation to provide information responsive to this request.

3. The United States acknowledges a continuing obligation to provide discovery to the extent that it is required by the defense request and applicable law. Please feel free to contact me if you have any questions or concerns at (202) 685-4572 or ashden.fein@jfhqncr.northcom.mil.



ASHDEN FEIN
CPT, JA
Trial Counsel



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
U.S. ARMY MILITARY DISTRICT OF WASHINGTON
210 A STREET
FORT LESLEY J. MCNAIR, DC 20319-5013

ANJA-CL

12 April 2011

MEMORANDUM FOR Mr. David E. Coombs, Civilian Defense Counsel

SUBJECT: Response to Defense Request for Discovery, 1 November 2010 – U.S. v. PFC
Bradley Manning

1. The responses provided in this discovery request account for the ongoing national security concerns of this case and the ongoing law enforcement investigation(s), and responds under the limitations of applicable Executive Orders. The United States acknowledges its requirements under Article 46, UCMJ, the Rules for Courts-Martial, and relevant case law.
2. Discovery Response.

All damage assessments conducted by Original Classification Authorities (OCAs).

RESPONSE: The United States is not currently in possession of this information, and will make a determination whether to provide the information when it becomes available.

3. The United States acknowledges a continuing obligation to provide discovery to the extent that it is required by the defense request and applicable law. Please feel free to contact me if you have any questions or concerns at (202) 685-4572 or ashden.fein@jfhqncr.northcom.mil.


ASHDEN FEIN
CPT, JA
Trial Counsel



REPLY TO
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DEPARTMENT OF THE ARMY
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FORT LESLEY J. MCNAIR, DC 20319-5013

ANJA-CL

12 April 2011

MEMORANDUM FOR Mr. David E. Coombs, Civilian Defense Counsel

SUBJECT: Response to Defense Request for Discovery, 8 December 2010 – U.S. v. PFC Bradley Manning

1. The responses provided in this discovery request account for the ongoing national security concerns of this case and the ongoing law enforcement investigation(s), and responds under the limitations of applicable Executive Orders. The United States acknowledges its requirements under Article 46, UCMJ, the Rules for Courts-Martial, and relevant case law.

2. Discovery Response.

a. The names and contact information for all government investigators who have participated or who are presently participating in the investigation of the case, previously requested on 29 October and 15 November 2010. *See* Defense Request, paragraph 2(a).

RESPONSE: The United States has provided a portion of this information and understands its continuing obligation to provide information responsive to this request.

b. Contact information for SA Hyung Kim from the Department of Defense and SA Richard Bowen from the Army Computer Crimes Unit. *See* Defense Request, paragraph 2(a).

RESPONSE: This request is denied at this time. The defense is invited to renew its request, if this case is referred to a court-martial.

c. An inventory of the items seized from the home of Mr. Paul Francia at 601 Hazelwood Terrace, Rochester, New York 14609. *See* Defense Request, paragraph 2(a).

RESPONSE: This request is denied at this time. The defense is invited to renew its request, if this case is referred to a court-martial.

d. All forensic results and investigative reports by the Department of State regarding the information obtained by Wikileaks as referenced by Assistant Secretary of State for Public Affairs P.J. Crowley. *See* Defense Request, paragraph 2(b).

RESPONSE: The United States will not provide the requested information. The defense has failed to provide any basis for its request. The United States will reconsider this request when provided with an authority that obligates the United States to provide the requested information.

ANJA-CL

SUBJECT: Response to Defense Request for Discovery, 8 December 2010 – U.S. v. PFC
Bradley Manning

e. Any specific damage assessment by the Department of State regarding the disclosures of the diplomatic cables by Wikileaks. *See* Defense Request, paragraph 2(b).

RESPONSE: The United States will not provide the requested information. The defense has failed to provide any basis for its request. The United States will reconsider this request when provided with an authority that obligates the United States to provide the requested information.

f. Any assessment, report, e-mail, or document by Secretary of State Hillary Rodham Clinton regarding the disclosures of diplomatic cables by Wikileaks. *See* Defense Request, paragraph 2(b).

RESPONSE: The United States will not provide the requested information. The defense has failed to provide any basis for its request. The United States will reconsider this request when provided with an authority that obligates the United States to provide the requested information.

g. Any report, e-mail or document discussing the need for the State Department to disconnect access to its files from the government's classified network. *See* Defense Request, paragraph 2(b).

RESPONSE: The United States will not provide the requested information. The defense has failed to provide any basis for its request. The United States will reconsider this request when provided with an authority that obligates the United States to provide the requested information.

h. All forensic results and investigative reports by the Department of Defense regarding the information obtained by Wikileaks. *See* Defense Request, paragraph 2(c).

RESPONSE: The United States does not presently have the authority to disclose this classified information and will make a determination whether to provide the information if and when it becomes available.

i. Results of any joint investigation with the Federal Bureau of Investigation (FBI) as referenced by Secretary of Defense Robert M. Gates. *See* Defense Request, paragraph 2(c).

RESPONSE: The United States has provided a portion of this information and understands its continuing obligation to provide information responsive to this request.

j. Any specific damage assessment by the Department of Defense regarding the disclosure of classified documents and videos, the subject of this case, by Wikileaks. *See* Defense Request, paragraph 2(c).

ANJA-CL

SUBJECT: Response to Defense Request for Discovery, 8 December 2010 – U.S. v. PFC Bradley Manning

RESPONSE: The United States will not provide the requested information. The defense has failed to provide any basis for its request. The United States will reconsider this request when provided with an authority that obligates the United States to provide the requested information.

k. Any and all documentation related to the Department of Justice investigation into the alleged leaks by Wikileaks as referenced by Attorney General of the United States Eric H. Holder. See Defense Request, paragraph 2(d).

RESPONSE: The United States will not provide the requested information. The defense has failed to provide any basis for its request. The United States will reconsider this request when provided with an authority that obligates the United States to provide the requested information.

l. Any and all documentation related to President Barack H. Obama's order for an investigation and a government wide-review of how agencies safeguard sensitive information. See Defense Request, paragraph 2(e).

RESPONSE: The United States will not provide the requested information. The defense has failed to provide any basis for its request. The United States will reconsider this request when provided with an authority that obligates the United States to provide the requested information.

m. Any and all documents related to the steps the administration is considering regarding these leaks and the nature of the criminal investigation underway into how the documents were made public as referenced by Robert Gibbs, the White House spokesman. See Defense Request, paragraph 2(e).

RESPONSE: The United States will not provide the requested information. The defense has failed to provide any basis for its request. The United States will reconsider this request when provided with an authority that obligates the United States to provide the requested information.

n. Any assessment given, or discussions concerning, the Wikileaks disclosures by any member of the government to President Obama. Any e-mail, report, assessment, directive, or discussion by President Obama to the Department of Defense, Department of State or Department of Justice. See Defense Request, paragraph 2(f).

RESPONSE: The United States will not provide the requested information. The defense has failed to provide any basis for its request. The United States will reconsider this request when provided with an authority that obligates the United States to provide the requested information.

ANJA-CL

SUBJECT: Response to Defense Request for Discovery, 8 December 2010 – U.S. v. PFC Bradley Manning

o. Any and all documents relating to the Government Task Force created to review the various Wikileaks releases for potentially damaging information prior to the actual releases. This Task Force apparently had over 120 members reviewing the documents that were either released or pending release to determine the possible harm to national security. *See* Defense Request, paragraph 2(g).

RESPONSE: The United States does not presently have the authority to disclose this classified information and will make a determination whether to provide the information if and when it becomes available.

p. The results of any investigation or review by Mr. Russell Travers who has been appointed by President Obama to head an interagency committee assigned to assess the damage caused by Wikileaks exposures and to organize efforts to tighten security measures in government agencies. *See* Defense Request, paragraph 2(h).

RESPONSE: The United States will not provide the requested information. The defense has failed to provide any basis for its request. The United States will reconsider this request when provided with an authority that obligates the United States to provide the requested information.

q. Any and all documentation related to the Pentagon's review on the policy and technological shortfalls that led to the Wikileaks disclosures as referenced by Pentagon spokesman Bryan Whitman. *See* Defense Request, paragraph 2(i).

RESPONSE: The United States will not provide the requested information. The defense has failed to provide any basis for its request. The United States will reconsider this request when provided with an authority that obligates the United States to provide the requested information.

r. Any and all documentation related to the Central Intelligence Agency (CIA) investigation of Wikileaks announced by CIA Director Leon Panetta and any internal or external memorandums addressing the investigation of Wikileaks, PFC Bradley Manning or the nature of the Office of Security's investigation into these matters. *See* Defense Request, paragraph 2(j).

RESPONSE: The United States will not provide the requested information. The defense has failed to provide any basis for its request. The United States will reconsider this request when provided with an authority that obligates the United States to provide the requested information.

s. Any and all documentation relating to the government's position of taking a hard line on unauthorized leaks of information, as demonstrated by the prosecutions of a former National Security Agency official, a Federal Bureau of Investigation linguist, and a State Department contractor and referenced by CIA Director Leon Panetta. *See* Defense Request, paragraph 2(k).

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SUBJECT: Response to Defense Request for Discovery, 8 December 2010 – U.S. v. PFC Bradley Manning

RESPONSE: The United States will not provide the requested information. The defense has failed to provide any basis for its request. The United States will reconsider this request when provided with an authority that obligates the United States to provide the requested information.

t. Any and all memorandums, e-mails, or other references by Congressmen, Senators, or government officials concerning the disposition of this case or the need to punish PFC Bradley Manning. *See* Defense Request, paragraph 2(k).

RESPONSE: The United States will not provide the requested information. The defense has failed to provide any basis for its request. The United States will reconsider this request when provided with an authority that obligates the United States to provide the requested information.

u. Any and all documentation, e-mails, or reports given to the Summary Court-Martial Convening Authority, the General Court-Martial Convening Authority, or the Staff Judge Advocate concerning the disposition of PFC Bradley Manning's case or the nature of the charges or possible charges against PFC Manning. Specifically, any attempt to influence the independent discretion of anyone involved in the military justice process. *See* Defense Request, paragraph 2(l).

RESPONSE: The United States will not provide the requested information. The defense has failed to provide any basis for its request. The United States will reconsider this request when provided with an authority that obligates the United States to provide the requested information.

v. Any and all documents or observation notes by employees of the Quantico confinement facility relating to PFC Bradley Manning. *See* Defense Request, paragraph 2(m).

RESPONSE: The United States has provided a portion of this information and understands its continuing obligation to provide information responsive to this request.

w. The results of the 15-6 investigation into the government's improper release of classified information to the defense. *See* Defense Request, paragraph 2(n).

RESPONSE: The United States will not provide the requested information. The defense has failed to provide any basis for its request. The United States will reconsider this request when provided with an authority that obligates the United States to provide the requested information.

ANJA-CL

SUBJECT: Response to Defense Request for Discovery, 8 December 2010 – U.S. v. PFC
Bradley Manning

3. The United States acknowledges a continuing obligation to provide discovery to the extent that it is required by the defense request and applicable law. Please feel free to contact me if you have any questions or concerns at (202) 685-4572 or ashden.fein@jfhqncr.northcom.mil.



ASHDEN FEIN
CPT, JA
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REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
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ANJA-CL

12 April 2011

MEMORANDUM FOR Mr. David E. Coombs, Civilian Defense Counsel

SUBJECT: Response to Defense Request for Discovery, 10 January 2011 – U.S. v. PFC Bradley Manning

1. The responses provided in this discovery request account for the ongoing national security concerns of this case and the ongoing law enforcement investigation(s), and responds under the limitations of applicable Executive Orders. The United States acknowledges its requirements under Article 46, UCMJ, the Rules for Courts-Martial, and relevant case law.

2. Discovery Response.

a. Any information relating to 18 U.S.C. § 2703(d) order or any search warrant by the government of Twitter, Facebook, Google or any other social media site. Any metadata, MD5 hash marks or other unique identifying information obtained from the 2703(d) order or search warrant. See Discovery Request, paragraph 2(a).

RESPONSE: The United States will not provide the requested information. The defense has failed to provide any basis for its request. The United States will reconsider this request when provided with an authority that obligates the United States to provide the requested information.

b. The results and all supporting documents for the investigation conducted by LTG Robert Caslen Jr. The report is directed by the Secretary of the Army John McHugh and is supposed to be completed by 1 February 2011. It will address how PFC Bradley Manning was selected for his job, how he was trained, whether his superiors missed warning signs that he was downloading documents that he did not need to read and how PFC Manning allegedly released the documents. See Discovery Request, paragraph 2(b).

RESPONSE: This request is denied at this time. The defense is invited to renew its request, if this case is referred to a court-martial.

c. The results of any inquiry and testimony taken by House of Representative oversight committee led by Representative Darrell Issa. The committee is due to look into Wikileaks, the actions of Attorney General Eric Holder, and the investigation of PFC Bradley Manning. See Discovery Request, paragraph 2(c).

RESPONSE: The United States presently has no knowledge of any such records, outside publicly made statements through press conferences or media organizations, equally

ANJA-CL

SUBJECT: Response to Defense Request for Discovery, 10 January 2011 – U.S. v. PFC Bradley Manning

accessible by the defense. The United States will make a determination whether to provide the information if and when it becomes aware of such records.

d. A copy of all Agents Investigation Reports maintained under CID Regulation 195-1 not previously provided to the defense. A copy of all agent notes, other governmental Investigative reports and sworn statements. See Discovery Request, paragraph 2(d).

RESPONSE: The United States has provided a portion of this information and understands its continuing obligation to provide information responsive to this request.

3. The United States acknowledges a continuing obligation to provide discovery to the extent that it is required by the defense request and applicable law. Please feel free to contact me if you have any questions or concerns at (202) 685-4572 or ashden.fein@jfhqncr.northcom.mil.



ASHDEN FEIN
CPT, JA
Trial Counsel



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
U.S. ARMY MILITARY DISTRICT OF WASHINGTON
210 A STREET
FORT LESLEY J. MCNAIR, DC 20319-5013

ANJA-CL

12 April 2011

MEMORANDUM FOR Mr. David E. Coombs, Civilian Defense Counsel

SUBJECT: Response to Defense Request for Discovery, 16 February 2011 – U.S. v. PFC
Bradley Manning

1. The responses provided in this discovery request account for the ongoing national security concerns of this case and the ongoing law enforcement investigation(s), and responds under the limitations of applicable Executive Orders. The United States acknowledges its requirements under Article 46, UCMJ, the Rules for Courts-Martial, and relevant case law.

2. Discovery Response.

a. The defense requests the names of the Soldiers who have been flagged, the nature for why they were flagged, who imposed the flag, and any other derogatory information relating to this case to include, but not limited to: any reprimand (oral or written), UCMJ action, or administrative separation actions. See Discovery Request, paragraph 2(a).

RESPONSE: This request is denied at this time. The defense is invited to renew its request, if this case is referred to a court-martial.

b. The defense requests a copy of any and all audio or video tapes of PFC Manning at any time whether they be from in person visits or from telephonic conversations. See Discovery Request, paragraph 2(b).

RESPONSE: This request is denied at this time. The defense is invited to renew its request, if this case is referred to a court-martial.

c. A copy of the latest CID investigation report and all Agents Investigation Reports maintained under CID Regulation 195-1 not previously provided to the defense. Additionally, a copy of all agent notes, other governmental investigative reports, and sworn statements. See Discovery Request, paragraph 2(c).

RESPONSE: The United States has provided a portion of this information and understands its continuing obligation to provide information responsive to this request.

d. A roster of all individuals assigned to HHC, 2BCT, 10th Mountain Division, specifically any Soldier assigned in the S2 Section of 2BCT. The defense requests full name, rank, email and phone contact information for each individual. See Discovery Request, paragraph 2(d).

ANJA-CL

SUBJECT: Response to Defense Request for Discovery, 16 February 2011 – U.S. v. PFC
Bradley Manning

RESPONSE: The United States has provided all matters requested that are in its possession and understands its continuing obligation to provide information responsive to this request.

e. Access to all classified information that the government intends to use in this case. To include any damage assessment or information review conducted by any governmental agency or at the direction of a governmental agency. *See* Discovery Request, paragraph 2(d).

RESPONSE: The United States does not presently have the authority to disclose this classified information and will make a determination whether to provide the information if and when it becomes available.

3. The United States acknowledges a continuing obligation to provide discovery to the extent that it is required by the defense request and applicable law. Please feel free to contact me if you have any questions or concerns at (202) 685-4572 or ashden.fein@jfhqncr.northcom.mil.



ASHDEN FEIN
CPT, JA
Trial Counsel

Attachment F

UNITED STATES)

v.)

**DEFENSE DISCOVERY
REQUEST**

MANNING, Bradley E., PFC)

U.S. Army, xxx-xx)

Headquarters and Headquarters Company, U.S.)

Army Garrison, Joint Base Myer-Henderson Hall,)

Fort Myer, VA 22211)

DATED: 13 May 2011

1. In accordance with the Rules for Courts-Martial and the Military Rules of Evidence, Manual for Courts-Martial, United States. 2008, Article 46, Uniform Code of Military Justice, and other applicable law, request for supplemental discovery is hereby made for the charged offenses in the case of United States v. Bradley E. Manning.
2. The defense requests that the government continue with its obligation to provide discovery in response to each item listed in its previous discovery requests on 29 October 2010, 15 November 2010, 8 December 2010, 10 January 2011, and 16 February 2011 and to also respond to the below requested discovery.
3. The defense requests that the government produce any and all documents (sworn or signed statements, photographs, emails etc.), tangible items (books, papers, etc.), and reports (investigative summaries, damage assessments, Original Classification Authority (OCA) determinations, etc.) conducted by the United States Army, the Department of Defense, the Department of Justice, the National Security Agency, the Defense Intelligence Agency, the Department of Homeland Security Office of Intelligence and Analysis, the Central Intelligence Agency, the Federal Bureau of Investigation, and the Bureau of Diplomatic Security (DS). The trial counsel, upon defense request, has an affirmative obligation to seek out requested evidence that is in the possession of the government even if that evidence is not already in the immediate possession of the trial counsel. *United States v. Williams*, 50 M.J. 436, 441 (C.A.A.F. 1999); *United States v. Bryan*, 868 F.2d 1032, 1036 (9th Cir. 1989); *United States v. Brooks*, 966 F.2d 1500, 1503 (1992) (the government is considered to have possession of information that is in the control of agencies that are "closely aligned with the prosecution").
4. The defense requests any *Brady* material in the government's possession. *Brady v. Maryland*, 373 U.S. 83 (1963) (holding that due process requires the government to turn over exculpatory evidence in its possession). The defense also requests any *Jencks* material in the government's possession. *Jencks v. United States*, 353 U.S. 657 (1957) (holding that, in a criminal prosecution, the government may not withhold documents relied upon by government witnesses, even where disclosure of those documents might damage national security matters). Specifically, the defense requests copies of all statements, oral or written, by any witnesses. The defense also requests any evidence in

the government's possession that contradicts or is inconsistent with the government's theory of the case.

5. The defense requests that the government inform the defense counsel if it does not intend to comply with any specific provision of this request.

6. It is understood that this is a continuing request.

7. A copy of this request was served on Trial Counsel by e-mail on 13 May 2011.

A handwritten signature in black ink, appearing to read 'D. Coombs', is positioned above the printed name.

DAVID EDWARD COOMBS
Civilian Defense Counsel

UNITED STATES

v.

DEFENSE REQUEST TO
PRESERVE EVIDENCE

MANNING, Bradley E., PFC
U.S. Army, xxx-xx-
Headquarters and Headquarters Company, U.S.
Army Garrison, Joint Base Myer-Henderson Hall,
Fort Myer, VA 22211

DATED: 21 September 2011

1. In accordance with the Rules for Courts-Martial (R.C.M.) 701(a) and (c), Manual for Courts-Martial, United States, 2008, Article 46, Uniform Code of Military Justice, and other applicable law, defense counsel in the above entitled case respectfully request that the U.S. Government preserve all computer forensic evidence obtained in this case.
2. The Defense specifically requests that the Government preserve all the hard drives from the Tactical Sensitive Compartmented Information Facility (T-SCIF) and the Tactical Operations Center (TOC) of Headquarters and Headquarter Company (HHC), 2nd Brigade Combat Team (BCT), 10th Mountain Division, Forward Operating Base (FOB) Hammer, Iraq and provide an EnCase forensic image of each computer to the defense for its inspection. The defense also requests an EnCase forensic image of any other computer seized by the Government in this case.
3. In accordance with R.C.M. 701(e), "[e]ach party shall have equal opportunity to ... inspect evidence." Defense counsel is requesting an equal opportunity to inspect the hard drives from the T-SCIF and TOC of HHC, 2nd BCT, 10th Mountain Division, FOB Hammer, Iraq. The defense believes the requested evidence constitutes *Brady* material under *Brady v. Maryland*, 373 U.S. 83 (1963).
4. A copy of this request was served on Trial Counsel by e-mail on 21 September 2011.


DAVID EDWARD COOMBS
Civilian Defense Counsel

UNITED STATES)

v.)

**DEFENSE DISCOVERY
REQUEST**

MANNING, Bradley E., PFC)

U.S. Army, xxx-xx-)

Headquarters and Headquarters Company, U.S.)

Army Garrison, Joint Base Myer-Henderson Hall,)

Fort Myer, VA 22211)

DATED: 13 October 2011

1. In accordance with the Rules for Courts-Martial and the Military Rules of Evidence, Manual for Courts-Martial, United States, 2008, Article 46, Uniform Code of Military Justice, and other applicable law, request for discovery is hereby made for the charged offenses in the case of United States v. Bradley E. Manning.

a. A copy of any adverse administrative or UCMJ action, all supporting documentation, and any rebuttal materials to such action based upon the 15-6 investigation conducted by LTG Robert I. Caslen Jr. or any other governmental investigation, with regards to any individual that was the subject of such an adverse action in relation to the alleged leak of classified information in this case. The request includes, but is not limited to, the following individuals: COL, David M. Miller, COL Paul R. Walter, LTC Brian D. Kerns, LTC Rodney Garfield, LTC Randolph Wardle, MAJ Eric Davis, MAJ Eric Graham, MAJ Jason A. Morrow, MAJ Clifford D. Clausen, MAJ Elijah A. Dreher, CPT Matthew W. Freeburg, 1SG Eric H. Usbeck, CPT Thomas M. Cherepko, CPT Steven J. Lim, CPT Barclay D. Keay, CPT Casey Martin, 1LT Tanya M. Gaag, 1LT Elizabeth A. Fields, CW2 Joshua D. Ehresman, CW2 Chad Eastep, CW2 Alfred Lyons, WO1 Kyle J. Balonek, SFC Paul D. Adkins, SSG Lawrence W. Mitchell, SPC Daniel W. Padgett, and PFC Jirleah W. Showman.

b. An inspection of all seized governmental computers from the Tactical Sensitive Compartmented Information Facility (T-SCIF) and Tactical Operations Center (TOC) of Headquarters and Headquarters Company (HHC), 2nd Brigade Combat Team (BCT), 10 Mountain Division, Forward Operating Base (FOB) Hammer, Iraq for the presence of any and all unauthorized computer programs to include, but not limited to: mIRC (a full featured Internet Relay Chat client for Windows that can be used to communicate, share, play or work with others on IRC networks); Wget (a web crawler program designed for robustness over slow or unstable network connections); GFOTRANS (an application program which allows a user to easily convert geographic coordinates among a wide variety of coordinate systems, map projections and datums); and Grid Extractor (a binary executable capable of extracting MGRS grids from multiple free text documents and importing them into a Microsoft Excel spreadsheet).

c. The defense requests any *Brady* material in the government's possession. *Brady v. Maryland*, 373 U.S. 83 (1963) (holding that due process requires the government to turn over exculpatory evidence in its possession). The defense also requests any *Jencks* material in the government's

possession. *Jencks v. United States*, 353 U.S. 657 (1957) (holding that, in a criminal prosecution, the government may not withhold documents relied upon by government witnesses, even where disclosure of those documents might damage national security matters). The defense specifically requests the following information:

i) White House: any report or recommendation concerning the alleged leaks in this case by Mr. Russell Travers, National Security Staff's Senior Advisor for Information Access and Security Policy. Mr. Travers was tasked to lead a comprehensive effort to review the alleged leaks in this case. Any and all documentation related to President Barack H. Obama's order for an investigation and a government wide-review of how agencies safeguard sensitive information. Additionally, any and all documents related to the steps the administration is considering regarding these leaks and the nature of the criminal investigation underway into how the documents were made public as referenced by former White House Press Secretary Robert Gibbs. Any assessment given, or discussions concerning, the Wikileaks disclosures by any member of the government to President Obama. Any e-mail, report, assessment, directive, or discussion by President Obama to the Department of Defense, Department of State or Department of Justice;

ii) President's Intelligence Advisory Board: any report or recommendation concerning the alleged leaks in this case by Chairman Chuck Hagel or any other member of the Intelligence Advisory Board;

iii) Central Intelligence Agency: any report, damage assessment or recommendation by the Wikileaks Task Force or any other CIA member concerning the alleged leaks in this case. Any internal or external memorandums addressing the investigation of Wikileaks, PFC Bradley Manning or the nature of the Office of Security's investigation into these matters;

iv) Department of Defense: All forensic results and investigative reports by the Department of Defense regarding the information obtained by Wikileaks and the results of any joint investigation with the Federal Bureau of Investigation (FBI) as referenced by former Secretary of Defense Robert M. Gates. Additionally, any specific damage assessment by the Department of Defense regarding the disclosure of classified documents and videos, the subject of this case, by WikiLeaks. Specifically, any report by the Information Review Task Force (IRTF) that was responsible for leading a comprehensive Department of Defense review of classified documents obtained by the Wikileaks website and any other associated materials;

v) Department of Justice: Any and all documentation related to the Department of Justice investigation into the alleged leaks by WikiLeaks as referenced by Attorney General of the United States Eric H. Holder;

vi) Department of State: Any and all documentation relating to a review of the alleged leaks in this case and any specific damage assessment by the Department of State regarding the disclosure of diplomatic cables, the subject of this case, by WikiLeaks;

vii) Office of the Director of National Intelligence (ODNI): Any and all documentation relating to any review or damage assessment conducted by ODNI or in cooperation with any other government agency;

viii) Other Government Intelligence Agencies: Any and all documents relating to any task force or other governmental intelligence agency review of the various alleged leaks in this case to include, but not limited to, any damage assessment based upon the alleged leaks or any corrective action taken by the United States Government due to the alleged leaks; AND

ix) House of Representatives: Results of any inquiry and testimony taken by House of Representative oversight committee led by Representative Durrell Issa. The committee discussed the actions of Wikileaks, the actions of Attorney General Eric Holder, and the investigation of PFC Bradley Manning.

d. The defense requests a copy of the Preliminary Inquiry Report. According to Department of Defense (DoD) 5105.21-M-1, once an SCI Security Official determines that a security violation has occurred, the SCI Security Official must report the violation within 72 hours of discovery to the appropriate Senior Officials of the Intelligence Community (SOIC) or Senior Intelligence Officer (SIO).

e. The defense requests a copy of the Damage Assessment of Compromised Information that is required to be submitted to the Special Security Officer (SSO) under DoD 5105.21-M-1 once an SCI Security Official determines that a security violation has occurred. The damage assessment is supposed to contain the date of the assessment; the name and office symbol conducting the assessment; subject/title, date, number, originator and original classification of document; whether the document can be declassified or downgraded, either in whole or in part; justification for classification (the specific statements in the document which are classified, the basis for classification, and a complete bibliography of all classified source materials used in preparation of the document); whether the classified information identified is accurate; whether the classified information identified was the subject of any official release; and whether the information identified as classified can be edited for the purpose of prosecution.

f. The defense requests a copy of the final security violation investigation report submitted to the SSO DoD/ Defense Intelligence Agency (DIA) under DoD 5105.21-M-1. The report is used to assess intent, location of the incident, risk of compromise, sensitivity of information, and mitigating factors in arriving at a final analysis of the incident.

g. A copy of all SCI security management and self-inspection reports for the T-SCIF of HHC, 2nd BCT, 10 Mountain Division, FOB Hammer, Iraq.

2. The defense requests that the government informs the defense counsel if it does not intend to comply with any specific provision of this request.

3. It is understood that this is a continuing request.

4. A copy of this request was served on Trial Counsel by email on 13 October 2011.

A handwritten signature in black ink, appearing to read 'David E. Coombs', written in a cursive style.

DAVID EDWARD COOMBS
Civilian Defense Counsel

UNITED STATES

v.

MANNING, Bradley E., PFC

U.S. Army, xxx-xx-xx

Headquarters and Headquarters Company, U.S.

Army Garrison, Joint Base Myer-Henderson Hall,

Fort Myer, VA 22211

**DEFENSE DISCOVERY
REQUEST**

DATED: 15 November 2011

1. In accordance with the Rules for Courts-Martial and the Military Rules of Evidence, Manual for Courts-Martial, United States, 2008, Article 46, Uniform Code of Military Justice, and other applicable law, request for discovery is hereby made for the charged offenses in the case of United States v. Bradley E. Manning.

2. The Defense requests that the Government respond to each item listed in its previous discovery requests and to also respond to the following additional discovery:

a) Whether any NIPR or SIPR computer within the 2d BCT T-SCIF or Supply Annex required an end-user to have their ID CAC Card in the computer;

b) The required log-in procedure for use of the HP laptop, touch smart TS2, serial number CNF8492K3S;

c) All NIPR and SIPR logs for any computer within the 2d BCT T-SCIF from 1 November 2009 to 27 May 2010;

d) An EnCase forensic image of any computer seized by the government and all other information relied upon by the government to claim information leaked to Wikileaks was obtained by any terrorist group such as Al-Qaeda or Hizb-L Islami Gulbuddin (HIG);

e) A current curriculum vitae for each forensic expert who has worked on this case for the government;

f) Any classification review and damage assessment for documents related to Specification 8 and 9 of Charge II;

g) Any classification review and damage assessment for the document related to Specification 15 of Charge II.

3. The Defense requests that the Government provide notice in writing if it does not intend to comply with any specific provision of this request.

4. It is understood that this is a continuing request.

5. A copy of this request was served on Trial Counsel by email on 15 November 2011.

A handwritten signature in black ink, appearing to read 'D. Coombs', with a stylized flourish at the end.

DAVID EDWARD COOMBS
Civilian Defense Counsel

UNITED STATES

v.

MANNING, Bradley E., PFC

U.S. Army, xxx-xx

Headquarters and Headquarters Company, U.S.

Army Garrison, Joint Base Myer-Henderson Hall,
Fort Myer, VA 22211

**DEFENSE DISCOVERY
REQUEST**

DATED: 16 November 2011

1. In accordance with the Rules for Courts-Martial and the Military Rules of Evidence, Manual for Courts-Martial, United States, 2008, Article 46, Uniform Code of Military Justice, and other applicable law, request for discovery is hereby made for the charged offenses in the case of United States v. Bradley E. Manning.

2. The Defense requests that the Government respond to each item listed in its previous discovery requests and to also respond to the following additional discovery:

a) An EnCase forensic image of any computer seized by the government and all other information relied upon by the government to claim information alleged to have been disclosed in this case was in the possession of an unauthorized individual in December of 2009 (according to the Government, this individual was a representative of WikiLeaks);

b) Any damage assessment or review completed in this case either by or with the assistance of the Defense Intelligence Agency, the Office of the National Counterintelligence Executive or any other governmental agency;

3. The Defense requests that the Government provide notice in writing if it does not intend to comply with any specific provision of this request.

4. It is understood that this is a continuing request.

5. A copy of this request was served on Trial Counsel by email on 16 November 2011.

/S/
DAVID EDWARD COOMBS
Civilian Defense Counsel

Attachment G



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
JOINT BASE MYER - HENDERSON HALL
204 LEE AVENUE
FORT MYER, VIRGINIA 22211-1199

IMND-MHH-ZA

16 Nov 11

MEMORANDUM FOR LTC Paul Almanza, 150th Judge Advocate General Detachment, Legal Support Organization, MG Albert C. Lieber, USAR Center, 6901 Telegraph Road, Alexandria, VA 22310

SUBJECT: Special Instructions for Investigation under Article 32, UCMJ

1. You are directed to resume the investigation of the enclosed charges and any other related matters concerning PFC Bradley Manning, xxx-xx- [REDACTED] Headquarters and Headquarters Company, U.S. Army Garrison, Joint Base Myer-Henderson Hall, Fort Myer, VA, 22211. This is your primary duty until the investigation is completed.
2. On 4 August 2010, I appointed you to investigate the original charges, dated 5 July 2010, and any other related matters concerning the accused. On 18 March 2011, I dismissed the original charges and directed you to investigate the additional charges preferred against PFC Manning, dated 1 March 2011, and any other related matters concerning the accused.
3. The accused is entitled to qualified legal counsel as a matter of right, unless he expressly waives this right. The accused is represented by Mr. David Coombs, civilian defense counsel, and multiple members of the U.S. Army Trial Defense Service (TDS). Trial counsel from the Office of the Staff Judge Advocate (OSJA), Military District of Washington (MDW), will represent the United States. The trial counsel and the defense counsel each play an adversarial role in the proceedings and you must avoid talking to either party about the merits of the case outside of settings where all parties have the opportunity to be heard.
4. You will conduct your investigation in accordance with Article 32, UCMJ, and Rule for Courts-Martial (RCM) 405. You will also use DA Pamphlet 27-17 as a procedural guide in conducting your investigation.
5. The accused is charged with Aiding the Enemy by Giving Intelligence, a violation of Article 104, UCMJ, as well as multiple violations of Articles 92 and 134, UCMJ relating to downloading and transmitting various classified documents, photographs, and videos from Secret Internet Protocol Router Network databases. You will use applicable portions of Military Rule of Evidence (MRE) 505 as your procedural guide when classified information is used during the investigation, subject to the following instructions:
 - a. The accused is required to comply with the notice provisions of MRE 505(h), and the below special instructions.

IMND-MHH-ZA

SUBJECT: Special Instructions for Investigation under Article 32, UCMJ

(1) If the accused intends to disclose or to cause the disclosure of classified information in any manner, or requests classified information not previously produced in discovery, the defense counsel must provide written notice no later than fourteen days before the scheduled date of the Article 32 hearing. This request will be routed through you and the trial counsel to the undersigned, but only if you determine that the requested information is relevant to the investigation, not cumulative, and requested in a timely manner.

(2) At my direction, the trial counsel will attempt to obtain the requested classified information on behalf of the defense or request authority for the defense to use the classified information in their possession at the Article 32 investigation. If the OCA does not agree to produce the classified information and/or agree to its use during the Article 32, then the material is not "reasonably available" under RCM 405(g)(2).

(3) IAW MRE 505, that decision may not be challenged until referral of the case to a court-martial, but you will include a statement of the reasons for your determination in the record of investigation and note any objection by the accused.

(4) All classified information used during your investigation is subject to my Protective Order for Classified Information, dated 17 September 2010.

b. Article 32 investigations are open to the public and you will ensure the Article 32 is kept open to the public whenever possible. If either party intends to disclose or introduce classified information in an open forum during the Article 32, you will conduct a closure hearing as outlined in RCM 806(b)(2) before closing the proceeding and excluding the public. To assist in your determination under RCM 806(b)(2), you will require both parties to submit in advance a proposed plan for the introduction of classified information during the proceeding, including subject areas or lines of questioning that may elicit classified responses during the testimony of witnesses. You will review the potentially classified subject matter areas in advance to understand how and why the subject area could involve a classified matter and develop closure procedures in consultation with your security officer.

c. You will have a security officer assigned to you for the duration of the proceeding, up to and including the completion of your findings and recommendations. The security officer will assist you whenever questions arise as to the classification of particular documents, proper handling or storage of classified information, or subject areas that may involve classified matters. You will consult your security officer when determining whether or not to close the proceeding to the public to ensure that proper procedures are followed and classified information is not inadvertently disclosed in a public forum. The security officer will be present during the entire proceeding and should be prepared to assist you if any testimony, inquiry, discussion of evidence, or documentary evidence could result in the disclosure of classified information in a setting not approved for disclosure.

6. You will schedule the time and date of the Article 32 hearing within seven days of receiving this memorandum. However, you will not convene the Article 32 investigation any sooner than thirty days from the date of this memorandum. The Article 32 will take place in the Fort Meade,

IMND-MHH-ZA

SUBJECT: Special Instructions for Investigation under Article 32, UCMJ

Maryland courtroom, and thirty days of lead time is required to execute the OPLAN to ensure proper security for the accused and other participants, establish the special infrastructure for the hearings, and prepare to have the capability to conduct closed hearings.

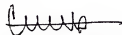
7. You will complete your investigation no later than sixty days from the date of this memorandum. The completed report will include a summarized transcript of the Article 32 investigation. Pursuant to RCM 707(c)(1), you may approve any reasonable delay of the Article 32 investigation; however, you are not authorized to grant a delay that would prevent you from completing your investigation within sixty calendar days of the date of this memorandum. Requests for delay beyond this time must be submitted to me for approval. All requests for delays must be in writing and will be either approved or disapproved in writing.

8. Contact the Chief, Administrative Law Division, OSJA, MDW to coordinate with your legal advisor. Consult your legal advisor before the hearing and throughout the Article 32 process for advice as to procedure, guidance of law applicable to the case, and proper completion of the report. The OSJA, MDW will provide administrative support for this investigation. Contact the Chief Paralegal to coordinate administrative support.

2 Encls

1. Appointment Memo, 4 Aug 10

2. Additional Charges Directive, 18 Mar 11



CARL R. COFFMAN, JR.

COL, AV

Commanding

CF: (wo/ encl)

Trial Counsel

Defense Counsel

Attachment H

UNITED STATES

v.

MANNING, Bradley E., PFC

U.S. Army, xxx-xx [REDACTED]

Headquarters and Headquarters Company, U.S.

Army Garrison, Joint Base Myer-Henderson Hall,

Fort Myer, VA 22211

**DEFENSE REQUEST FOR
PRODUCTION OF EVIDENCE**

DATED: 22 November 2011

1. On behalf of PFC Bradley E. Manning, his civilian counsel, David E. Coombs, requests the production of the below listed evidence. The defense also requests that the Investigating Officer, LTC Paul Almanza, include the below listed evidence in his Article 32 notification letter for the following reasons:

a. In order to inquire into the truth of the matter alleged in the charges, consider the form of the charges, and assist the Investigating Officer in making recommendations as to disposition of the charges. *See* Rule for Courts-Martial (R.C.M.) 405(e);

b. In order to serve as a means of discovery for the defense. The defense has repeatedly requested the below discovery in this case, but the government has consistently responded with a blanket denial of the defense request. *See* R.C.M. 405(a) Discussion (stating the "investigation also serves as a means of discovery" for the defense); R.C.M. 405(g)(1)(B) (stating "evidence, including documents or physical evidence, which is under the control of the Government and which is relevant to the investigation and not cumulative, shall be produced...");

c. In order to present matters in mitigation of the charged offenses. R.C.M. 405(f) (stating an accused has the right to present evidence in defense, mitigation, and extenuation); Article 32(b), Uniform Code of Military Justice (UCMJ) (stating an accused may "present anything he may desire in his own behalf, either in defense or mitigation, and the investigation officer shall examine available witnesses requested..."); *United States v. Garcia*, 59 M.J. 447, 451 (C.A.A.F. 2004) (ruling that an accused has the right to present anything he may desire in his own behalf at an Article 32 in defense or mitigation);

2. On 18 January 2011, the defense was notified that PFC Manning, at the direction of CWO4 James Averhart, was placed in suicide risk. This decision was made over the recommendations of Capt. William Hocter and the defense appointed expert Capt. Kevin Moore. When PFC Manning was being ordered to surrender his clothes as part of the unnecessary suicide risk, the Brig made the decision to videotape this event along with an interrogation of PFC Manning by CWO4 Averhart and others. On 19 January 2011, the defense filed a preservation of evidence request with the government and a request for production of the video. The defense believes the video will support PFC Manning's claim of unlawful pretrial punishment. The government has yet to respond to the defense request. *See* R.C.M. 405(e) Discussion (stating that inquiry into

other issues such as legality of searches or the admissibility of evidence is proper by an Article 32 Investigating Officer).

3. The defense has previously requested a copy of all adverse administrative or UCMJ action, all supporting documentation, and any rebuttal materials to such action based upon the 15-6 investigation conducted by LTG Robert L. Caslen Jr. or any other governmental investigation, with regards to any individual that was the subject of such an adverse action in relation to the alleged leak of classified information in this case. The previous requests included, but was not limited to, the following individuals: COL. David M. Miller, COL Paul R. Walter, LTC Brian D. Kerns, LTC Rodney Garfield, LTC Randolph Wardle, MAJ Eric Davis, MAJ Eric Graham, MAJ Jason A. Morrow, MAJ Clifford D. Clausen, MAJ Elijah A. Dreher, CPT Matthew W. Freeburg, 1SG Eric H. Usbeck, CPT Thomas M. Cherepko, CPT Steven J. Lim, CPT Barclay D. Keay, CPT Casey Martin, 1LT Tanya M. Gaab, 1LT Elizabeth A. Fields, CW2 Joshua D. Ehresman, CW2 Chad Eastep, CW2 Alfred Lyons, WO1 Kyle J. Balonek, SFC Paul D. Adkins, SSG Lawrence W. Mitchell, SGT Daniel W. Padgett, and PFC Jirleah W. Showman. The government has so far only provided information in relation to SFC Paul D. Adkins.

4. The defense specifically requested an Encase forensic image of each computer from the Tactical Sensitive Compartmented Information Facility (T-SCIF) and the Tactical Operations Center (TOC) of Headquarters and Headquarter Company (HHC), 2nd Brigade Combat Team (BCT), 10th Mountain Division, Forward Operating Base (FOB) Hammer, Iraq. The defense has previously requested these items in discovery and filed a preservation of evidence request with the government. An inspection of all seized governmental computers from the T-SCIF and TOC would allow the defense to provide evidence that it was common for soldiers to add unauthorized computer programs to include, but not limited to: mIRC (a full featured Internet Relay Chat client for Windows that can be used to communicate, share, play or work with others on IRC networks); Wget (a web crawler program designed for robustness over slow or unstable network connections); GEOTRANS (an application program which allows a user to easily convert geographic coordinates among a wide variety of coordinate systems, map projections and datums); and Grid Extractor (a binary executable capable of extracting MGRS grids from multiple free text documents and importing them into a Microsoft Excel spreadsheet) to their computers. The government has used this alleged conduct to charge PFC Manning with two Specifications of a violation of Article 92.

5. The defense has previously requested any *Brady* or *Jencks* material in the government's possession. *Brady v. Maryland*, 373 U.S. 83 (1963) (holding that due process requires the government to turn over exculpatory evidence in its possession); *Jencks v. United States*, 353 U.S. 657 (1957) (holding that in a criminal prosecution, the government may not withhold documents relied upon by government witnesses, even where disclosure of those documents might damage national security matters). Under military law, the trial counsel has an affirmative obligation to seek out requested evidence by the defense that is in the possession of the government even if that evidence is not already in the immediate possession of the trial counsel. *United States v. Williams*, 50 M.J. 436, 441 (C.A.A.F. 1999); *United States v. Bryan*, 868 F.2d 1032, 1036 (9th Cir. 1989); *United States v. Brooks*, 966 F.2d 1500, 1503 (1992) (the government is considered to have possession of information that is in the control of agencies that are "closely aligned with the prosecution"). The defense specifically requests the below listed information

from the government that is in control of agencies that are closely aligned with this prosecution. The trial counsel has responded with a blanket denial of the requested information despite the fact that this information clearly impacts not only on the form and proper disposition of the charges, but also represents clear *Brady* and *Jencks* material:

a. White House: Mr. Russell Travers, National Security Staff's Senior Advisor for Information Access and Security Policy was tasked to lead a comprehensive effort to review the alleged leaks in this case. He has completed a report detailing the rather benign nature of the leaks and the lack of any real damage to national security. The defense requests a copy of this review and any assessment given, or discussions concerning, the WikiLeaks disclosures by any member of the government to President Barack H. Obama. The defense requests any e-mail, report, assessment, directive, or discussion by President Obama to the Department of Defense concerning this case in order to determine the presence of unlawful command influence. See R.C.M. 405(e). Additionally, defense requests any e-mail, report, assessment, directive, or discussion by President Obama to the Department of State or Department of Justice concerning this case;

b. Central Intelligence Agency: The Original Classification Authority's (OCA) classification review was completed by Mr. Robert L. Roland. His classification review indicated that a disclosure of the charged information could be expected to cause damage or serious damage to national security. This determination is at odds with the damage assessment completed by the WikiLeaks Task Force and by the Information Review Task Force. Additionally, this determination is at odds with the Office of Security's review at the direction of former Director Leon Panetta. As such, Mr. Roland should not be permitted to espouse an opinion which is inconsistent with the damage assessments conducted by the government. *Brady v. Maryland*, 373 U.S. 83 (1963); *Jencks v. United States*, 353 U.S. 657 (1957);

c. Department of Defense: Early on in the investigation, the Department of Defense reached out for assistance from the Department of State, the Federal Bureau of Investigation, the Defense Intelligence Agency, the Office of the National Counterintelligence Executive and the Central Intelligence Agency. The defense is entitled to receive any forensic results and investigative reports by any of the cooperating agencies in this investigation. *United States v. Williams*, 50 M.J. 436, 441 (C.A.A.F. 1999); *United States v. Bryan*, 868 F.2d 1032, 1036 (9th Cir. 1989); *United States v. Brooks*, 966 F.2d 1500, 1503 (1992); Article 46, Uniform Code of Military Justice (UCMJ). Finally, former Secretary of Defense Robert M. Gates on 29 July 2010 directed the Defense Intelligence Agency to lead a comprehensive review of the documents allegedly given to WikiLeaks and to coordinate under the Information Review Task Force (IRTF, formerly TF 725) to conduct a complete damage review. The results of this damage review undercut the testimony of each of the representatives from the OCA for the charged documents in this case. Specifically, the damage assessment concluded that all of the information allegedly leaked was either dated, represented low-level opinions, or was already commonly understood and known due to previous public disclosures.

d. Department of Justice: The defense requests any and all documentation related to the Department of Justice investigation into the alleged leaks by WikiLeaks as referenced by Attorney General of the United States Eric H. Holder, to include any grand jury testimony and

any information relating to any 18 U.S.C. § 2703(d) order or any search warrant by the government of Twitter, Facebook, Google or any other social media site. *Brady v. Maryland*, 373 U.S. 83 (1963); *Jencks v. United States*, 353 U.S. 657 (1957);


e. Department of State: The Department of State formed a task force of over 120 individuals to review each released diplomatic cable. The task force conducted a damage assessment of the leaked cables and concluded that the information leaked either represented low-level opinions or was already commonly known due to previous public disclosures. According to published reports in multiple new agencies, including the Associated Press, The Huffington Post, and Reuters, internal U.S. government reviews by the Department of Defense and the Department of State have determined that the leak of diplomatic cables caused only limited damage to U.S. interests abroad, despite the Obama administration's public statements to the contrary. "A congressional official briefed on the reviews stated that the administration felt compelled to say publicly that the revelations had seriously damaged American interests in order to bolster legal efforts to shut down the WikiLeaks website and bring charges against the leakers. According to the published account 'We were told (the impact of WikiLeaks revelations) was embarrassing but not damaging,' said the official, who attended a briefing given in late 2010 by State Department officials. National security officials familiar with the damage assessments being conducted by defense and intelligence agencies told Reuters the reviews so far have shown "pockets" of short-term damage, some of it potentially harmful." See generally, http://www.huffingtonpost.com/2011/01/19/us-official-wikileaks-rev_n_810778.html). This determination is at odds with the classification review conducted by the OCA. Mr. Patrick Kennedy should not be permitted to espouse an opinion which is inconsistent with the damage assessments conducted by the government. *Brady v. Maryland*, 373 U.S. 83 (1963); *Jencks v. United States*, 353 U.S. 657 (1957);

6. The defense has requested a copy of the Damage Assessment of Compromised Information that is required to be submitted to the Special Security Officer (SSO) under DoD 5105.21-M-1 once an SCI Security Official determines that a security violation has occurred. The damage assessment is supposed to contain the date of the assessment; the name and office symbol conducting the assessment; subject/title, date, number, originator and original classification of document; whether the document can be declassified or downgraded, either in whole or in part; justification for classification (the specific statements in the document which are classified, the basis for classification, and a complete bibliography of all classified source materials used in preparation of the document); whether the classified information identified is accurate; whether the classified information identified was the subject of any official release; and whether the information identified as classified can be edited for the purpose of prosecution. The government has not yet provided this information to the defense. This information should be ordered produced for the consideration of the Investigating Officer at the Article 32.

7. The defense requested a copy of the final security violation investigation report submitted to the SSO DoD/ Defense Intelligence Agency under DoD 5105.21-M-1. The report is used to assess intent, location of the incident, risk of compromise, sensitivity of information, and mitigating factors in arriving at a final analysis of the incident. The government has not yet provided this information to the defense. This information should be ordered produced for the consideration of the Investigating Officer at the Article 32.

8. The defense has previously requested any known evidence tending to diminish credibility of any government witness including, but not limited to, prior convictions under Military Rule of Evidence (M.R.E.) 609, evidence of other character, conduct, or bias bearing on witness credibility under M.R.E. 608. Specifically, the defense requests the name and contact information for any law enforcement agent working with Mr. Adrian A. Lamo. See *Brady v. Maryland*, 373 U.S. 83 (1963); *United States v. Agurs*, 427 U.S. 97 (1976).

9. The defense has previously requested a copy of all audio and video surveillance of the visitation booths at Quantico, Virginia when individuals, including defense team members, met with PFC Manning. The defense also requests a copy of all audio and video surveillance of the visitation rooms at the Joint Regional Correctional Facility at Fort Leavenworth, Kansas when individuals, including defense team members, met with PFC Manning. The government has only provided a partial account of the audio and video surveillance in its possession.


DAVID EDWARD COOMBS
Civilian Defense Counsel

Attachment I



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
U.S. ARMY MILITARY DISTRICT OF WASHINGTON
210 A STREET
FORT LESLEY J. MCNAIR, DC 20319-5013

ANJA-CL

30 November 2011

MEMORANDUM FOR LTC Paul Almanza, 150th Judge Advocate General Detachment, Legal Support Organization, MG Albert C. Lieber, USAR Center, 6901 Telegraph Road, Alexandria, VA 22310

SUBJECT: Response to Defense Request for Production of Evidence, 22 November 2011 – United States v. PFC Bradley Manning

1. The below responses to the defense production request account for the ongoing national security concerns of this case, the ongoing law enforcement investigation(s), and comply with the limitations of applicable Executive Orders. The United States acknowledges its requirements under Article 46, UCMJ, the Rules for Courts-Martial, and relevant case law.

2. Discovery Response.

a. The alleged video of PFC Manning being ordered to surrender his clothes as part of suicide risk and of an alleged interrogation of PFC Manning by CWO4 Averhart and others. *See* Production Request, paragraph 2.

RESPONSE: The United States will provide all matters requested that are in its possession no later than 2 December 2011.

b. A copy of all adverse administrative or UCMJ actions, all supporting documentation, and any rebuttal materials to such action based upon the 15-6 investigation conducted by LTG Robert L. Caslen Jr. *See* Production Request, paragraph 3.

RESPONSE: The United States has provided all matters requested that are in its possession.

c. An Encase forensic image of each computer from the Tactical Sensitive Compartmented Information Facility (T-SCIF) and the Tactical Operations Center (TOC) of Headquarters and Headquarter Company (HHC), 2nd Brigade Combat Team (BCT), 10th Mountain Division, Forward Operating Base (FOB) Hammer, Iraq. *See* Production Request, paragraph 4.

RESPONSE: The United States has provided to the defense an Encase forensic image of all electronic storage devices, including hard drives, examined by law enforcement that were included in the forensic reports. Additionally, the United States is still actively working to preserve related computer hard drives based on defense's preservation request dated 21 September 2011.

ANJA-CL

SUBJECT: Response to Defense Request for Production of Evidence, 22 November 2011 –
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d. Any *Brady* or *Jencks* material in the possession of the White House, specifically an alleged report completed by Mr. Russell Travers. See Production Request, paragraph 5.

RESPONSE: The United States presently has no knowledge of any *Brady* or *Jencks* material in the possession of any member of the White House. The United States will furnish said records to the defense should it become aware of such records. The United States has no knowledge of the alleged report completed by Mr. Russell Travers. The United States will make a determination whether to provide the information if and when it becomes aware of such records.

e. Any *Brady* or *Jencks* material in the possession of the Central Intelligence Agency. See Production Request, paragraph 5.

RESPONSE: The United States presently has no knowledge of any *Brady* or *Jencks* material in the possession of any employee of the Central Intelligence Agency. The United States will furnish said records to the defense should it become aware of such records. The United States provided the applicable classification review completed by Mr. Robert Roland, as cited by the defense. The United States does not presently have the authority to disclose damage assessments, if any, cited by the defense and will make a determination whether to provide the information if and when it becomes available.

f. Any *Brady* or *Jencks* material in the possession of the Department of Defense, including any forensic results and investigative reports by the Department of Defense. See Production Request, paragraph 5.

RESPONSE: The United States presently has no knowledge of any *Brady* or *Jencks* material in the possession of any employee of the Department of Defense. The United States will furnish said records to the defense should it become aware of such records. The United States has provided all forensic results and investigative reports requested that are in its possession and that the United States has authority to disclose. The United States understands its continuing obligation to provide information responsive to this request. The United States does not presently have the authority to disclose damage assessments, if any, cited by the defense and will make a determination whether to provide the information if and when it becomes available.

g. Any *Brady* or *Jencks* material in the possession of the Department of Justice, specifically any and all documentation related to the Department of Justice investigation into the alleged leaks by WikiLeaks as referenced by Attorney General of the United States Eric H. Holder, to include any grand jury testimony or any search warrant of Twitter, Facebook, Google, or any other social media site. See Production Request, paragraph 5.

RESPONSE: The United States presently has no knowledge of any *Brady* or *Jencks* material from the Department of Justice, to include any grand jury testimony and search warrants. The United States will furnish said records to the defense should it become aware of such records.

ANJA-CL

SUBJECT: Response to Defense Request for Production of Evidence, 22 November 2011 –
United States v. PFC Bradley Manning

h. Any *Brady* or *Jencks* material in the possession of the Department of State. See Production Request, paragraph 5.

RESPONSE: The United States presently has no knowledge of any *Brady* or *Jencks* material from the Department of State. The United States will furnish said records to the defense should it become aware of such records. The United States has provided the applicable classification review completed by Mr. Patrick Kennedy, as cited by the defense. The United States does not presently have the authority to disclose damage assessments, if any, cited by the defense and will make a determination whether to provide the information if and when it becomes available.

i. A copy of the Damage Assessment of Compromised Information that is required to be submitted to the Special Security officer (SSO) under DoD 5105.21-M-1 once an SCI Security Official determinates that a security violation has occurred. The government has not yet provided this information to the defense. See Production Request, paragraph 6.

RESPONSE: The regulation cited by the defense only applies to a compromise of sensitive compartmented information (SCI), and there is currently no evidence supporting a compromise of SCI. The United States provided the completed investigation required under Army Regulation 380-5, for an alleged compromise of classified information.

j. A copy of the final security violation investigation report submitted to the SSO DoD/DIA under DoD 5105.21-M-1. The government has not yet provided this information to the defense. See Production Request, paragraph 7.

RESPONSE: The regulation cited by the defense only applies to a compromise of sensitive compartmented information (SCI), and there is currently no evidence supporting a compromise of SCI. The United States provided the completed investigation required under Army Regulation 380-5, for an alleged compromise of classified information.

k. Any known evidence tending to diminish credibility of any government witness. See Production Request, paragraph 8.

RESPONSE: The United States has provided all matters requested that are in its possession and that the United States has authority to disclose. The United States understands its continuing obligation to provide information responsive to this request.

l. The name and contact information for any law enforcement agent working with Mr. Adrian A. Lamo. See Production Request, paragraph 8.

RESPONSE: This information is available at CCIU. Contact SAC Kenneth King at (571) 305-4462 or (571) 480-0460 for this information.

ANJA-CL

SUBJECT: Response to Defense Request for Production of Evidence, 22 November 2011 –
United States v. PFC Bradley Manning

m. A copy of all audio and video surveillance of the visitation booths at Quantico, Virginia when individuals, including defense team members, met with PFC Manning, as well as a copy of all audio and video surveillance of the visitation rooms at the Joint Regional Correctional Facility at Fort Leavenworth, Kansas when individuals, including defense team members, met with PFC Manning. *See* Production Request, paragraph 9.

RESPONSE: The United States has provided matters responsive to this request and will provide all remaining matters in its possession no later than 2 December 2011. The United States understands its continuing obligation to provide information responsive to this request.

3. The point of contact of this memorandum is the undersigned.



ASHDEN FEIN
CPT, JA
Trial Counsel

CF:
Defense Counsel

Attachment J

UNITED STATES

v.

MANNING, Bradley E., PFC

U.S. Army. xxx-xx-xx

Headquarters and Headquarters Company, U.S.

Army Garrison, Joint Base Myer-Henderson Hall,

Fort Myer, VA 22211

**DEFENSE REQUEST TO
COMPEL PRODUCTION
OF EVIDENCE**

DATED: 1 December 2011

I. INTRODUCTION

1. In accordance with the Rules for Courts-Martial (R.C.M.) 405(f)(10) and (g)(1)(B); Manual for Courts-Martial (M.C.M.), United States, 2008; Article 46, Uniform Code of Military Justice; and the Fifth and Sixth Amendments to the United States Constitution, defense counsel in the above entitled case respectfully request that the Investigating Officer compel production of evidence.

II. BACKGROUND

2. PFC Bradley Manning is charged with various offenses under Article 92 and Article 134 of the UCMJ. The offenses deal with the incorporation, under Article 134, of the Espionage Statute 18 U.S.C. § 793(e), Public Money or Property Statute 18 U.S.C. § 641, and Computer Fraud Statute 18 U.S.C. § 1030(a)(1). The original charges were preferred on 5 July 2010. Those charges were dismissed by the convening authority on 18 March 2011. The current charges were preferred on 1 March 2011.

3. On 22 November 2011, the defense submitted a request for production of evidence at the Article 32 hearing under R.C.M. 405(g)(1)(B). The government responded to the defense request for production of evidence on 30 November 2011.

III. DISCUSSION

4. Under R.C.M. 405 and 701, the defense may request materials that are within the possession, custody, or control of military authorities. The government is obligated by law to turn over evidence in its possession, as well as to retrieve from other government agencies and entities outside of their immediate office relevant evidence upon a defense request. *United States v. Williams*, 50 M.J. 436 (C.A.A.F. 1999). This motion renews the defense's request for the previously mentioned items in the Defense Request For Production Of Evidence.

5. The standard set out in R.C.M. 405 and R.C.M. 701 requires the government to turn over items that are within the "government's control." This requirement means that the trial counsel,

upon defense request, has an affirmative obligation to seek out requested evidence that is in the possession of the government even if that evidence is not already in its immediate possession. *Id.* at 441. The “prosecutor will be deemed to have knowledge of and access to anything in the possession, custody, or control of any federal agency participating in the same investigation of the defendant.” *United States v. Bryan*, 868 F.2d 1032, 1036 (9th Cir. 1989); *Williams*, 50 M.J. at 441. Furthermore, R.C.M. 405(g)(1)(B) and 703(a) establishes the standard for discovery in military courts: the prosecution and defense “shall have equal opportunity to obtain witnesses and evidence.” See Article 46, UCMJ.

6. In the instant case, the defense requested the production of evidence at the Article 32 hearing. Instead of responding to the defense request as envisioned under R.C.M. 405(g)(1)(B), the government simply treated the request as another request for discovery. Consistent with its previous responses to discovery requests, the government provided one of the following responses: (a) a general denial; (b) a statement that it had already provided all information in its possession; or (c) a statement that it was either unaware of any information or did not presently have the authority to disclose the requested information.

7. To ensure that R.C.M. 405 and 703 will have meaning at trial, “[e]ach party shall have adequate opportunity to prepare its case and equal opportunity to interview witnesses and inspect evidence.” R.C.M. 701(e). The accused is entitled to inspect both exculpatory and inculpatory evidence. *Brady v. Maryland*, 373 U.S. 83 (1963); *United States v. Kern*, 22 M.J. 49, 51 (C.M.A. 1986). Construing the due process clause, the Supreme Court in *Brady v. Maryland* established a duty to disclose evidence favorable to the defense: “the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material, either to guilt or punishment, irrespective of the good faith or bad faith of the prosecutor.” *Brady v. Maryland*, 373 U.S. 83, 87 (1963). As the numerous cases deciding *Brady v. Maryland* claims indicate, “favorable” is not the same as evidence that proves the defendant to be totally innocent or establishes an unshakable alibi. Anything that tends to assist the defense, cast doubt on the government’s case, or impact on a potential punishment is “evidence favorable to an accused.” See generally, Army Regulation 27-26, paragraph 3.8(d); *United States v. Kinzer*, 39 M.J. 559, 562 (A.C.M.R. 1994); *United States v. Adens*, 56 M.J. 724 (A.C.C.A. 2002). The defense has requested the following information be produced at the Article 32 hearing:

a. The video of PFC Manning being ordered to surrender his clothing at the direction of CWO4 James Averhart and his subsequent interrogation on 18 January 2011. Given the fact the defense filed a preservation of evidence request on 19 January 2011 – nearly one year ago – the government has no excuse for not providing the video. See Appendix A. The video is clearly within the possession of the government and should have already been produced. *The government has responded that it “will provide all matters requested that are in its possession no later than 2 December 2011.”*

b. A copy of all adverse administrative or UCMJ actions, all supporting documentation and any rebuttal materials to such action based upon the 15-6 investigation conducted by LTG Robert L. Caslen Jr. The matters requested can easily be found by going to the specifically listed servicemembers’ official records. *Williams*, 50 M.J. at 441 (government, upon defense request,

has an affirmative obligation to seek out requested evidence). It is without dispute that several officers and enlisted members received adverse administrative actions as a result of their failure to take appropriate action in this case. See Appendix B. Thus far, the defense believes it has only received information on one of the fifteen individuals recommended for adverse administrative action. *The government has responded that it "has provided all matters requested that are in its possession."*

c. An Encase forensic image of each computer from the Tactical Sensitive Compartmented Information Facility (T-SCIF) and the Tactical Operations Center (TOC) of Headquarters and Headquarters Company (HHC), 2nd Brigade Combat Team (BCT), 10th Mountain Division, Forward Operating Base (FOB) Hammer, Iraq. The lead investigative unit for the government requested preservation of these items on 30 September 2010. See Appendix C. Given the government's own preservation request, it should easily be able to determine the location of these items. *The government responded to the defense request by stating that "it is still actively working to preserve related computer hard drives based on defense's preservation request dated 21 September 2011."*

d. The defense requested any *Brady* or *Jencks* material in the government's possession. *Brady v. Maryland*, 373 U.S. 83 (1963) (holding that due process requires the government to turn over exculpatory evidence in its possession); *Jencks v. United States*, 353 U.S. 657 (1957) (holding that in a criminal prosecution, the government may not withhold documents relied upon by government witnesses, even where disclosure of those documents might damage national security matters). Under military law, the trial counsel has an affirmative obligation to seek out requested evidence by the defense that is in the possession of the government even if that evidence is not already in the immediate possession of the trial counsel. *United States v. Williams*, 50 M.J. 436, 441 (C.A.A.F. 1999); *United States v. Bryan*, 868 F.2d 1032, 1036 (9th Cir. 1989); *United States v. Brooks*, 966 F.2d 1500, 1503 (1992) (the government is considered to have possession of information that is in the control of agencies that are "closely aligned with the prosecution"). The defense specifically requested the below listed information from the government that is in control of agencies that are closely aligned with this prosecution. As is apparent from the government's responses, it has either purposefully chosen to not search for the specifically requested information, or is shirking its responsibility to do so by saying it has "no knowledge":

i) Mr. Russell Travers, National Security Staff's Senior Advisor for Information Access and Security Policy was tasked to lead a comprehensive effort to review the alleged leaks in this case. See Appendix D. *The government responded to the defense request by stating that it "has no knowledge of any Brady or Jencks material ... [and] will make a determination whether to provide the information if and when it becomes aware of such records."*

ii) A copy of any e-mail, report, assessment, directive, or discussion by President Obama to the Department of Defense concerning this case in order to determine the presence of unlawful command influence. See R.C.M. 405(e). Additionally, defense requests any e-mail, report, assessment, directive, or discussion by President Obama to the Department of State or Department of Justice concerning this case. *The government responded to the defense request by stating that it "has no knowledge of any Brady or Jencks material ... [and] will make a*

determination whether to provide the information if and when it becomes aware of such records."

iii) The damage assessment conducted by the Information Review Task Force and by the Office of Security. See Appendix E and F. *The government responded that it "has no knowledge of any Brady or Jencks material ... [and] does not presently have the authority to disclose damage assessments, if any, cited by the defense and will make a determination whether to provide the information if and when it becomes available."*

iv) The collateral investigations by the Department of State, the Federal Bureau of Investigation, the Defense Intelligence Agency, the Office of the National Counterintelligence Executive and the Central Intelligence Agency. The defense is entitled to receive any forensic results and investigative reports by any of the cooperating agencies in this investigation. *United States v. Williams*, 50 M.J. 436, 441 (C.A.A.F. 1999); *United States v. Bryan*, 868 F.2d 1032, 1036 (9th Cir. 1989); *United States v. Brooks*, 966 F.2d 1500, 1503 (1992); Article 46, Uniform Code of Military Justice (UCMJ). *The government responded that it "has no knowledge of any Brady or Jencks material ... [and] has provided all forensic results and investigative reports requested that are in its possession and that the United States has authority to disclose."*

v) The Department of Justice investigation into the alleged leaks by WikiLeaks as referenced by Attorney General of the United States Eric H. Holder, to include any grand jury testimony and any information relating to any 18 U.S.C. § 2703(d) order or any search warrant by the government of Twitter, Facebook, Google or any other social media site. *Brady v. Maryland*, 373 U.S. 83 (1963); *Jencks v. United States*, 353 U.S. 657 (1957). *The government responded that it "presently has no knowledge of any Brady or Jencks material ... and will furnish said records to the defense should it become aware of such records."*

vi) The Department of State damage assessment review conducted by its task force of over 120 individuals. This task force reviewed each released diplomatic cable. See Appendix G. *The government responded that it "has no knowledge of any Brady or Jencks material ... [and] does not presently have the authority to disclose damage assessments, if any, cited by the defense and will make a determination whether to provide the information if and when it becomes available."*

e. The Damage Assessment of Compromised Information that is required to be submitted to the Special Security Officer (SSO) under DoD 5105.21-M-1 once an SCI Security Official determines that a security violation has occurred. The defense also requested a copy of the final security violation investigation report submitted to the SSO DoD/ Defense Intelligence Agency under DoD 5105.21-M-1. The government had not previously responded to the defense discovery requests for this information. The government's response confirms that the alleged disclosures in this case did not involve any sensitive compartmented information. While this fact alone is not dispositive of whether the alleged disclosures caused harm, it is an additional factor supporting the defense request for production of the above damage assessments. *In response to the defense request for production of evidence, the government responded that it "there is currently no evidence supporting a compromise of sensitive compartmented information (SCI)."*

8. Under R.C.M. 405(g)(1)(B), upon receiving a defense request for production of evidence, the investigating officer should make an initial determination whether the information requested is "reasonably available." R.C.M. 405(g)(2)(C). "Evidence is reasonably available if its significance outweighs the difficulty, expense, delay, and effect on operations of obtaining the evidence." R.C.M. 405(g)(1)(B). Military courts recognize "a much more direct and generally broader means of discovery by an accused than is normally available to him in civilian courts." *United States v. Reece*, 25 M.J. 93, 94 (C.M.A. 1987). Regarding discovery, "military law has been preeminent, jealously guaranteeing to the accused the right to be effectively represented by counsel through affording every opportunity to prepare his case by openly disclosing the Government's evidence." *United States v. Enloe*, 35 C.M.R. 228, 230 (C.M.A. 1965). The only restrictions placed upon liberal defense discovery are that the information requested must be relevant and necessary to the subject of the inquiry, and the request must be reasonable. *Reece*, 25 M.J. at 95. "[D]etermination of the relevance and necessity of defense requested evidence should be made by the court, not *ex parte* by the prosecutor." *Id.* at 94 n. 4. According to the Court of Military Appeals, the Military Rules of Evidence establish "a low threshold of relevance." *Id.* at 95. Relevant evidence is "any 'evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.'" *Id.* at 95, quoting Military Rule of Evidence (M.R.E.) 401. In addition, the Court of Military Appeals stated in *United States v. Hart*, 29 M.J. 407, 410 (C.M.A. 1990):

In his opinion at the court below, Judge Gilley adopted the premise that, under Article 46, discovery available to the accused in courts-martial is broader than the discovery rights granted to most civilian defendants. From this, he correctly reasoned that, where prosecutorial misconduct is present or where the Government fails to disclose information pursuant to a specific request, the evidence will be considered "material unless failure to disclose" can be demonstrated to "be harmless beyond a reasonable doubt."

9. In accordance with these rules and law, the defense has requested the opportunity to inspect or receive copies of the items listed above in multiple defense discovery requests and has also requested that this information be produced at the Article 32 hearing. Thus far, the government has consistently failed to adequately respond.

10. The government's latest response is yet another example of its failure to exercise due diligence in obtaining requested information. The government has failed to provide a detailed account of its efforts to comply with its discovery obligations. Additionally, the government's response that it "*does not presently have the authority to disclose damage assessments, if any, cited by the defense and will make a determination whether to provide the information if and when it becomes available*" is either intentionally obstructionist or yet another example of its failure to exercise due diligence.

11. Under the rules, the government is not allowed to remain ignorant of the presence of evidence favorable to the accused that is reasonably within its possession. *United States v. Williams*, 50 M.J. 436 (C.A.A.F. 1999); *United States v. Bryan*, 868 F.2d 1032, 1036 (9th Cir.

1989). Instead, if the Investigating Officer determines that the information requested by the defense is reasonably available, one of the following must occur:

a. The Investigating Officer orders the custodian of the evidence to produce it at the Article 32 hearing and the custodian produces it. R.C.M. 405(g)(2)(C); or

b. The Investigating Officer orders the custodian of the evidence to produce it at the Article 32 hearing and once ordered, the custodian of the evidence determines the information is not reasonably available. If this happens the Investigating Officer and the accused are bound by the determination. *Id.* However, the Investigating Officer must include a statement of the reasons for that determination in the record of the investigation. R.C.M. 405(g)(2)(D). Once the case is referred, the accused is permitted under R.C.M. 906(b)(3) to move the military judge to review the determination during a pretrial session; or


c. The Investigating Officer orders the custodian of the evidence to produce it at the Article 32 hearing and once ordered, the convening authority determines the evidence should be withheld under Military Rule of Evidence (M.R.E.) 505(d)(5) since production of the evidence cannot be done without causing identifiable damage to national security; or

d. The Investigating Officer orders the custodian of the evidence to produce it at the Article 32 hearing and once ordered, the government objects to the production of the evidence on grounds of privilege and an in-camera review is conducted by the Investigating Officer under M.R.E. 505(i). A M.R.E. 505(i) review is appropriate since the Investigating Officer has the authority to perform those tasks that clearly impact the conduct of the Article 32 hearing. *See* R.C.M. 405(i) (providing that rules of privilege in Section V of the M.C.M. apply to the Article 32).

12. The government should not be permitted to determine what evidence will and will not be produced at the Article 32 hearing. The requested information is necessary for the defense to adequately prepare its case. Without the requested discovery, any Article 32 Investigation will be deficient. *See* R.C.M. 905(b)(1) and 906(b)(3) (concerning motions for appropriate relief relating to the pretrial investigation).

IV. RELIEF REQUESTED

13. Pursuant to the Fifth and Sixth Amendments to the United States Constitution, Article 46 UCMJ, R.C.M. 405, 701, and 906(b)(7), the defense requests the Investigating Officer to issue an order requiring the government to obtain the requested information. Failing to obtain the information, the government should be required to provide a detailed account of its efforts for review by the Investigating Officer.


DAVID EDWARD COOMBS
Civilian Defense Counsel

APPENDIX A

UNITED STATES

**DEFENSE REQUEST TO
PRESERVE EVIDENCE**

MANNING, Bradley E., PFC
U.S. Army, xxx-xx-xx
Headquarters and Headquarters Company, 1st S.
Army Garrison, Joint Base Myer-Henderson Hall,
Fort Myer, VA 22211

DAIED: 19 January 2011

1. In accordance with the Rules for Courts-Martial (R.C.M.) 701(a) and (e), Manual for Courts-Martial, United States, 2008, Article 46, Uniform Code of Military Justice, and other applicable law, defense counsel in the above entitled case respectfully request that the U.S. Government preserve the confinement facility video tape of the alleged disruptive behavior of PFC Bradley Manning and provide a copy to the defense for its inspection.

2. On 18 January 2011, the defense was notified that PFC Manning, at the direction of CW04 James Averhart, was placed in suicide prevention. This decision was made over the recommendations of Capt. William Heeter and the defense appointed expert Capt. Kevin Moore. When PFC Manning was being ordered to surrender his clothes, the Brig made the decision to videotape this event along with an interrogation of PFC Manning by CW04 Averhart and others.

3. In accordance with R.C.M. 701(e), "[e]ach party shall have equal opportunity to ... inspect evidence." Defense counsel is requesting an equal opportunity to inspect the video tape. The defense believes this evidence will support a motion for credit for unlawful pretrial punishment under Article 13, Uniform Code of Military Justice (UCMJ).

4. Defense counsel respectfully request the Government preserve the video and provide a copy to the defense.

5. A copy of this request was served on Trial Counsel by email on 19 January 2011.

DAVID EDWARD COOMBS
Civilian Defense Counsel

APPENDIX B



REF ID:
A7851066

DEPARTMENT OF THE ARMY
U.S. ARMY COMBINED ARMS CENTER AND FORT LEAVENWORTH
415 SHERMAN AVENUE UNIT 1
FORT LEAVENWORTH, KANSAS 66027-2306

ATZL-CG

7 February 2011

MEMORANDUM FOR Deputy Chief of Staff (G-1), Office of the Deputy Chief of Staff,
300 Army Pentagon, Washington, DC 20310-0300

SUBJECT: Request for DA Initiated Flags Re Army 15-6 Investigation into
Compromise of Classified Information to Wikileaks

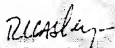
1. On 16 December 2010 the Secretary of the Army appointed the undersigned as Investigating Officer into the Compromise of Classified Information to Wikileaks. Paragraph 2c of the appointment memorandum directs that I "[i]dentify and, as appropriate, take action with regard to any person who should be held accountable for failures or deficiencies – to include the exercise of poor judgment – in applying Army programs, policies or procedures to PFC Bradley Manning.
2. Consistent with the Secretary's guidance, I have identified 15 personnel whose actions I am investigating to assess what role, if any, they played in PFC Manning's compromise of information to Wikileaks and what action to take, if any, based on each individual's actions and level of culpability, if any. Consistent with Army Regulation 600-8-2, Paragraph 1-11, personnel under investigation, formal or informal, are required to be flagged pending the completion of the investigation and any follow on adverse action that might result from the investigation.
3. In accordance with AR 600-8-2, Paragraphs 1-11 and 1-12, and my appointment memorandum dated 16 December 2010, I request that non-transferable flags be initiated against the following 15 named personnel.
 1. LTC Brian D. Kerns, xxx-xx-6666
 2. LTC Rodney Garfield, xxx-xx-0536
 3. LTC Randolph Wardle, xxx-xx-7757
 4. MAJ Eric Davis, xxx-xx-8657
 5. MAJ Eric Graham, xxx-xx-5229
 6. MAJ Jason A. Morrow, xxx-xx-1208
 7. MAJ Clifford D. Clausen, xxx-xx-0695
 8. MAJ Elijah A. Dreher, xxx-xx-9634
 9. 1SG Eric H. Usbeck, xxx-xx-2688
 10. CPT Thomas M. Cherepko, xxx-xx-1185
 11. CPT Steven J. Lim, xxx-xx-4438
 12. 1LT Elizabeth A. Fields, xxx-xx-2656

ATZL-CG

SUBJECT: Request for DA Initiated Flags Re: Army 15-6 Investigation into
Compromise of Classified Information to Wikileaks

13. CW2 Joshua D. Ehresman, xxx-xx-4174
 14. WO1 Kyle J. Balonek, xxx-xx-1513
 15. MSG Paul D. Adkins, xxx-xx-6776
4. Appropriate action shall be taken to remove the Flags at the appropriate time and consistent with 600-8-2, Paragraph 1-12.
5. POC for this action is my Executive Officer, LTC Thomas A. Shoffner at (913) 684-0020 or via e-mail at thomas.shoffner@us.army.mil.

Encl
SecArmy Appt Memo, 16 Dec 10


ROBERT L. CASLEN, JR.
Lieutenant General, USA
Investigating Officer

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ATZL-CG

SUBJECT: AR 15-6 Report – Compromise of Classified Information to Wikileaks

(including conduct warranting his referral to Behavioral Health), none of these failures absolve PFC Manning of any alleged criminal activity.¹²

| All Disclosure Rights are Excepted Offense Level | Countering / Admission (Verbal / Written) | Respondent (Verbal/No Ver) | Number of Participants (Art. 15) | Separation / Show Cause | Court Martial (Summary / AG / GCAL) |
|--|---|-------------------------------|--|----------------------------|--|
| 1. COL David M. Miller (Cm. 2/10 BCT) | X | | | | |
| 2. COL Paul R. Weather (Cm. 2/10 BCT) | X | | | | |
| 3. LTC Brian D. Kern (KGO 2/10 BCT) | | X | | | |
| 4. LTC Rodney Garfield (MND B, 1st CAV Bn) | X | | | | |
| 5. LTC Randolph Weather (LSD 4/10 AD G) | X | | | | |
| 6. MAJ Eric Davis (MND 4/10 AD G) | X | | | | |
| 7. MAJ Eric Davis (MND 4/10 AD G) | X | | | | |
| 8. MAJ Jason A. Manning (2/10 BCT) | | X | | | |
| 9. MAJ Clifford D. Glasgow (2/10 BCT) | | X | | | |
| 10. MAJ Hugh A. Dwyer (CP. HMC 2/10 BCT) | | X | | | |
| 11. CPT Matthew W. Treuberg (Lm. HMC 2/10 BCT) | X | | | | |
| 12. SGT Eric H. Underhill (SG. HMC 2/10 BCT) | | X | | | |
| 13. CPT Thomas M. Chappelle (BCT JAM & AFS, 2/10 BCT) | | X | | | |
| 14. CPT Steven J. Lee (MND 4/10 AD G) | | X | | | |
| 15. CPT Barclay D. Kiley (SG Night Shift G, 2/10 BCT) | X | | | | |
| 16. CPT Casey Martin (MND 4/10 AD G) | X | | | | |
| 17. SGT Eric M. Gault (Team Chief 2/10 BCT) (MND 4/10 AD G) | X | | | | |
| 18. SGT Kenneth A. Fields (SG. 2/10 BCT) | | X | | | |
| 19. CW2 Joshua D. Thompson (Lm. HMC) | | X | | | |
| 20. CW2 Eric R. Smith (2/10 BCT) | X | | | | |
| 21. CW2 Alfred Myers (2/10 BCT) | X | | | | |
| 22. WO1 Kier, Barone (Team SMC - HMC and Future NCO's 4/10 AD G) | | X | | | |
| 23. WO1 Paul D. Adams (SG. HMC, 2/10 BCT) | | | | | X |
| 24. SSG Lawrence W. Mitchell (SG. HMC, 2/10 BCT) | X | | | | |
| 25. SFC James W. Fugate (HMC Artillery, 2/10 BCT) | | | | | |
| 26. SFC John W. Shewmaker (Team Lm. 2/10 BCT) | X | | | | |

Figure 9. Accountability/Responsibility Matrix (U//FOUO)

6. (U//FOUO) Specific findings and recommendations pertaining to each individual referenced in Figure 9 above are addressed below

¹² (U//FOUO) Nothing uncovered during this investigation absolves PFC Manning of personal responsibility for his alleged disclosure of sensitive and classified information. Likewise, nothing uncovered during this investigation regarding PFC Manning's behavioral health issues appears to relieve him of responsibility for his alleged disclosure of sensitive and classified information. Of note – the investigative charter did not include a formal psychiatric assessment of PFC Manning and none was conducted

APPENDIX C



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
UNITED STATES ARMY CRIMINAL INVESTIGATION COMMAND
COMPUTER CRIME INVESTIGATIVE UNIT
WASHINGTON METRO RESIDENT AGENCY
9805 LOWEN ROAD, BUILDING 193
FORT BELVOIR, VIRGINIA 22060-5598

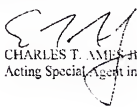
CISA-CCI-WM

30 Sep 2010

MEMORANDUM FOR Commander, 2d Brigade Combat Team (BCT), 10th Mountain Division,
Fort Drum, NY 13602

SUBJECT: Seizure of Government Computers and Related Equipment

1. This office is investigating the unauthorized disclosure of classified information and related offenses, which occurred while 2d BCT was deployed to Iraq. The investigation has identified numerous items of digital media that may hold evidence of the crime(s) or materially assist this investigation.
2. Agents from this office have seized and/or will seize items of classified and unclassified digital media such as servers, domain controllers, and hard drives believed to hold information pertinent to this investigation.
3. Should your staff identify any additional hard drives (classified or unclassified) used during the deployment to Iraq, I am informing you that these items represent potential evidence and must be preserved as such. Please inform me immediately should additional hard drives be found.
4. Agents will provide a receipt, DA Form 4137, Evidence/Property Custody Document for all items seized. This receipt may be used for inventory accountability purposes.
5. Most items collected as evidence should be processed and returned to you within the next few weeks. Please note, the supporting Trial Counsel may identify certain items of evidence that are required through the end of the trial.
6. Point of contact for this memorandum is the undersigned at commercial: (703) 805-2696, cell: (571) 480-2704, or email: Charles.ames@us.army.mil.


CHARLES T. AMES JR.
Acting Special Agent in Charge

APPENDIX D

Obama calls in expert Russell Travers to stop new leaks amid WikiLeaks scandal

- From: *AFP*
- December 02, 2010 9:23AM

BARACK Obama has appointed an anti-terrorism expert to lead US efforts to mitigate the damage of the WikiLeaks breach and prevent future illegal data disclosures.

Russell Travers, deputy director of information sharing at the National Counterterrorism Centre, "will lead a comprehensive effort to identify and develop the structural reforms needed in light of the WikiLeaks breach," the White House said in a statement.

Washington has been in damage control mode ever since the whistleblower website last weekend began publicly disclosing some 250,000 secret US diplomatic cables, many of which revealed embarrassing assessments of foreign leaders.

While the White House was seeking to play down the impact of the security violations, the Travers appointment was among the clearest signs that the Obama administration was seriously stung by the data dump and was taking substantive steps to avoid a repeat.

Among his new duties, Travers will be advising national security staff on "corrective actions, mitigation measures, and policy recommendations related to the breach," according to the White House.

He will also coordinate interagency discussions on developing actions "regarding technological and/or policy changes to limit the likelihood of such a leak reoccurring."

Travers has been tasked with collating the stream of terrorism-related information pouring into US agencies since the attacks of September 11, 2001.

The Washington Post describes him as the maintainer of the government database of terrorist entities and a coordinator of terrorism information-sharing initiatives.

The National Counter-Terrorism Centre where he works was among several agencies blamed for failing to uncover a plot to blow up a US airliner on Christmas Day last year.

The vast majority of the cables revealed by WikiLeaks in its latest document dump originated from the State Department or its diplomats in overseas missions, and State has launched a review of its security procedures.

"The department will also deploy an automated tool that will continuously monitor the classified network to detect anomalies that would not be readily apparent," as well as staff who will

analyse the anomalies "to ensure that they do not represent threats to the system," the White House said.

The president's intelligence advisory board will look at ways the executive branch shares and protects classified data, and will work "with departments and agencies across the government to ensure they gain a comprehensive appreciation of all relevant challenges and requirements necessary to safeguard classified information and networks."

PIAB will "examine the current posture of the whole of government" in terms of leaks of classified data and will "examine the balance between the need to share information and the need to protect information."

APPENDIX E

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SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

AUG 5 2010

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
DIRECTOR, OPERATIONAL TEST AND EVALUATION
DIRECTOR, COST ASSESSMENT AND PROGRAM
EVALUATION
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTOR, NET ASSESSMENT
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

Subject: Task Force to Review Unauthorized Disclosure of Classified Information (FOUO)

(U//FOUO) On July 28, 2010, I directed the Director, Defense Intelligence Agency (DIA) to establish an Information Review Task Force (IRTF) to lead a comprehensive Department of Defense (DoD) review of classified documents posted to the WikiLeaks website (www.wikileaks.org) on July 25, 2010, and any other associated materials. Department of Defense Components should provide DIA any assistance required to ensure the timely completion of the review.

(U//FOUO) The IRTF will review the impact of the unauthorized disclosure of classified information specified above. The IRTF will coordinate throughout the Intelligence Community in conducting this time-sensitive review and integrate its efforts with those of the National Counterintelligence Executive.

(U//FOUO) The IRTF will provide regular updates to the Office of the Secretary of Defense (OSD) on its findings. A more comprehensive interim report will be provided as the effort progresses. That report will include the following items:

- (U//FOUO) Any released information with immediate force protection implications;
- (U//FOUO) Any released information concerning allies or coalition partners that may negatively impact foreign policy;
- (U//FOUO) Any military plans;

OSD 09134-10



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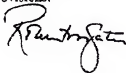
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- (U//FOUO) Any intelligence reporting;
- (U//FOUO) Any released information concerning intelligence sources or methods;
- (U//FOUO) Any information on civilian casualties not previously released;
- (U//FOUO) Any derogatory comments regarding Afghan culture or Islam; and
- (U//FOUO) Any related data that may have also have been released to WikiLeaks, but not posted.

A final report will be produced once all documents are assessed.

(U//FOUO) The IRTF is the single DoD organization with authority and responsibility to conduct the DoD review regarding this unauthorized disclosure. By separate tasking, I am directing USD(I) to conduct an assessment of the Department's procedures for accessing and transporting classified information.

(U//FOUO) This review is separate from, and unrelated to, any criminal investigation of the leaked information. The assessment and review of the leaked documents is not intended to, and shall not limit in any way, the ability of Department, Federal Bureau of Investigation or any other federal criminal investigators, trial counsel and prosecutors to conduct investigative and trial proceedings in support of possible prosecutions under the Uniform Code of Military Justice or federal criminal provisions.



cc:
Director of National Intelligence
Director, Central Intelligence Agency
Assistant Secretary of State for Intelligence & Research
National Counterintelligence Center

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1570

SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

1570
AUG 16 2010

The Honorable Carl Levin
Chairman
Committee on Armed Services
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Thank you for your July 28, 2010, letter regarding the unauthorized disclosure and publication of classified military documents by the WikiLeaks organization. I share your concerns about the potential compromise of classified information and its effect on the safety of our troops, allies, and Afghan partners.

After consulting with the Director of the Federal Bureau of Investigation, I have directed a thorough investigation to determine the scope of any unauthorized release of classified information and identify the person or persons responsible. I have also established an interagency Information Review Task Force, led by the Defense Intelligence Agency, to assess the content of any compromised information and the impacts of such a compromise. Our initial review indicates most of the information contained in these documents relates to tactical military operations. The initial assessment in no way discounts the risk to national security; however, the review to date has not revealed any sensitive intelligence sources and methods compromised by this disclosure.

The documents do contain the names of cooperative Afghan nationals and the Department takes very seriously the Taliban threats recently discussed in the press. We assess this risk as likely to cause significant harm or damage to the national security interests of the United States and are examining mitigation options. We are working closely with our allies to determine what risks our mission partners may face as a result of the disclosure. There is a possibility that additional military documents may be published by WikiLeaks and the Department is developing courses of action to address this possibility.

The scope of the assessment and nature of the investigative process require a great deal of time and effort. I am committed to investigating this matter and determining

31 JUL 31 2010



SECRETARY OF DEFENSE
02745021

appropriate action to reduce the risk of any such compromises in the future. We will keep you informed as additional information becomes available.

Sincerely,

A handwritten signature in dark ink, appearing to read "Robert M. Gates". The signature is fluid and cursive, with the first name "Robert" and last name "Gates" clearly legible.

cc:

The Honorable John McCain
Ranking Member

APPENDIX F

Message from the Director: Recent Media Leaks

November 8, 2010

We have seen in recent months a damaging spate of media leaks on a wide range of national security issues. WikiLeaks is but one egregious example. In some cases, CIA sources and methods have been compromised, harming our mission and endangering lives.

When information about our intelligence, our people, or our operations appears in the media, it does incredible damage to our nation's security and our ability to do our job of protecting the nation. More importantly, it could jeopardize lives. For this reason, such leaks cannot be tolerated. The Office of Security is directed to fully investigate these matters. Unauthorized disclosures of classified information also will be referred to the Department of Justice. Our government is taking a hard line, as demonstrated by the prosecutions of a former National Security Agency official, a Federal Bureau of Investigation linguist, and a State Department contractor.

Here at the Agency, we are a family, which means we depend on each other—sharing burdens, challenges, and successes. But sharing cannot extend beyond the limits set by law and the “need to know” principle. The media, the public, even former colleagues, are not entitled to details of our work.

I would ask that every employee reflect on the responsibilities and privileges of service at CIA. Every officer takes a secrecy oath, which obligates us to protect classified information while we serve at the Agency and after we leave. A vast majority of officers live up to their oath, but even a small number of leaks can do great damage. Our adversaries benefit, while our credibility, our operations, and, ultimately, our ability to accomplish the mission all take a hit. Our sworn duty to the American people is to protect them and we must do nothing to violate the law or that sacred pledge.

Leon E. Panetta

CIA launches task force to assess impact of U.S. cables' exposure by WikiLeaks

By *Greg Miller*

Washington Post Staff Writer
Wednesday, December 22, 2010 12:24 AM

The CIA has launched a task force to assess the impact of the exposure of thousands of U.S. diplomatic cables and military files by WikiLeaks.

Officially, the panel is called the WikiLeaks Task Force. But at CIA headquarters, it's mainly known by its all-too-apt acronym: W.T.F.

The irreverence is perhaps understandable for an agency that has been relatively unscathed by WikiLeaks. Only a handful of CIA files have surfaced on the WikiLeaks Web site, and records from other agencies posted online reveal remarkably little about CIA employees or operations.

Even so, CIA officials said the agency is conducting an extensive inventory of the classified information, which is routinely distributed on a dozen or more networks that connect agency employees around the world.

And the task force is focused on the immediate impact of the most recently released files. One issue is whether the agency's ability to recruit informants could be damaged by declining confidence in the U.S. government's ability to keep secrets.

"The director asked the task force to examine whether the latest release of WikiLeaks documents might affect the agency's foreign relationships or operations," CIA spokesman George Little said. The panel is being led by the CIA's Counterintelligence Center but has more than two dozen members from departments across the agency.

To some agency veterans, WikiLeaks has vindicated the CIA's long-standing aversion to sharing secrets with other government agencies, a posture that came under sharp criticism after it was identified as a factor that contributed to the nation's failure to prevent the attacks of Sept. 11, 2001.

Even while moving to share more information over the past decade, the agency "has not capitulated to this business of making everything available to outsiders," said a former high-ranking CIA official who recently retired. "They don't even make everything available to insiders. And by and large the system has worked."

CIA veterans said most of the agency's international correspondence is classified at the "Secret" level, same as the records that ended up online. But the agency has always insisted on using its own systems.

As recently as two years ago, the agency rejected a request to make more of its intelligence reports available on the SIPRNET, the classified network used by the Pentagon to pass information around the world.

"We simply said we weren't going to do it," another former CIA official said. "The consensus was there were simply too many people potentially who had access."

The former officials spoke on condition of anonymity because they weren't authorized to discuss agency security measures.

Among those people with access to SIPRNET was a low-level U.S. Army intelligence analyst, Bradley E. Manning, who has been charged with disclosing classified information and is suspected of using a simple thumb drive to steal the files that were sent to WikiLeaks.

The CIA has had its own computer scandals. Security clearances for former CIA director John Deutch were suspended in the late 1990s after he was accused of keeping classified information on his computer at home.

Officials said the agency has also had internal difficulty keeping track of laptops that are sent to overseas stations, as well as sensitive information shared with thousands of contractors that the CIA has hired as part of a build-up over the past 10 years.

The agency employs software measures to minimize the chance of a WikiLeaks-like leak. Agency systems send warnings to administrators whenever a large amount of data is downloaded. And most of the CIA's computers are not equipped to allow the use of a removable drive.

Asked what might happen if he had inserted a thumb drive into the machine at his desk, the former senior CIA official quipped: "There would probably be a little trap door under my chair."

Even so, CIA security experts have fretted for years about the implications of moving secret information from pieces of paper to digital files that can be distributed online.

"It's just a huge vulnerability," the former high-ranking CIA officer said. "Nobody could carry out enough paper to do what WikiLeaks has done."

APPENDIX G

U.S. officials privately say WikiLeaks damage limited

Tue, Jan 18 2011
By Mark Hosenball

WASHINGTON (Reuters) - Internal U.S. government reviews have determined that a mass leak of diplomatic cables caused only limited damage to U.S. interests abroad, despite the Obama administration's public statements to the contrary.

A congressional official briefed on the reviews said the administration felt compelled to say publicly that the revelations had seriously damaged American interests in order to bolster legal efforts to shut down the WikiLeaks website and bring charges against the leakers.

"I think they just want to present the toughest front they can muster," the official said.

But State Department officials have privately told Congress they expect overall damage to U.S. foreign policy to be containable, said the official, one of two congressional aides familiar with the briefings who spoke to Reuters on condition of anonymity.

"We were told (the impact of WikiLeaks revelations) was embarrassing but not damaging," said the official, who attended a briefing given in late 2010 by State Department officials.

WikiLeaks caused a media and diplomatic uproar late last year when it began to dribble out its cache of more than 250,000 U.S. diplomatic cables.

Major headlines were generated by some of the cables, which revealed that Saudi leaders had urged U.S. military action against Iran and detailed contacts between U.S. diplomats and political dissidents and opposition leaders in some countries.

"From our standpoint, there has been substantial damage," State Department spokesman P. J. Crowley told Reuters.

"We believe that hundreds of people have been put at potential risk because their names have been compromised in the release of these cables," he said.

YEMEN TIES STRAINED

National security officials familiar with the damage assessments being conducted by defense and intelligence agencies told Reuters the reviews so far have shown "pockets" of short-term damage, some of it potentially harmful. Long-term damage to U.S. intelligence and defense operations, however, is unlikely to be serious, they said.

Some of the cases of more serious damage have occurred in countries where WikiLeaks' revelations have publicized closer ties with Washington than local officials publicly admit.

For example, a cable released by WikiLeaks quoted Yemen's president saying he would allow U.S. personnel to engage in counter-terrorism operations on Yemeni territory even as he said publicly that the operations were being handled by domestic security forces.

U.S. officials say the continued media attention on such revelations has made it difficult for Washington to repair relations with governments critical to its counter-terrorism operations, such as Pakistan and Yemen.

Two U.S. intelligence officials said they were aware of specific cases where damage caused by WikiLeaks' revelations have been assessed as serious to grave, though they said they could not discuss the subject matter because it remained highly classified.

Crowley said the State Department had helped move a small number of people compromised by the leaks to safer locations.

Damage assessments by the State Department, Pentagon and U.S. intelligence community are still continuing, so the current view of many officials that damage has been limited could change if and when WikiLeaks and its media partners publish more documents.

The assessments also cover the leaking of tens of thousands of military field reports from Iraq and Afghanistan.

Special investigative teams are also combing through unpublished material which U.S. investigators believe is in the hands of WikiLeaks.

U.S. officials and sources close to WikiLeaks have said the website is sitting on a cache of documents related to the U.S. detention facility at Guantanamo Bay, Cuba, which includes intelligence-based risk assessments of detainees.

A spokeswoman for the office of Director of National Intelligence James Clapper, which oversees all U.S. intelligence agencies, said, "The irresponsible and reckless behavior of WikiLeaks has of course caused damage and will continue to be damaging in the months and years to come."

But current and former intelligence officials note that while WikiLeaks has released a handful of inconsequential CIA analytical reports, the website has made public few if any real intelligence secrets, including reports from undercover agents or ultra-sensitive technical intelligence reports, such as spy satellite pictures or communications intercepts.

Shortly before WikiLeaks began its gradual release of State Department cables last year, department officials sent emails to contacts on Capitol Hill predicting dire consequences, said one of the two congressional aides briefed on the internal government reviews.

However, shortly after stories about the cables first began to appear in the media, State Department officials were already privately playing down the damage, the two congressional officials said.

The U.S. government is examining whether criminal charges can be brought against WikiLeaks founder Julian Assange. Assange is in London fighting extradition to Sweden for questioning in a sexual misconduct investigation.

Attachment K



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
150TH JUDGE ADVOCATE GENERAL DETACHMENT (LSO)
MG ALBERT C. LIEBER USAR CENTER
6901 TELEGRAPH ROAD
ALEXANDRIA, VIRGINIA 22310-3320

AFRC-MJVA

15 December 2011

MEMORANDUM FOR US v. Manning Article 32(b) Participants

SUBJECT: Determinations as to Defense Requested Evidence

1. This document provides my determinations as to defense requested evidence listed in the defense's 1 December 2011 request to compel production of evidence:

- a. The video of PFC Manning being ordered to surrender his clothing at the direction of CW4 Averhart and his subsequent interrogation on 18 January 2011 – this evidence is not relevant to the form of the charges, the truth of the charges, or information as may be necessary to make an informed recommendation as to disposition; specifically, the circumstances surrounding PFC Manning's placement in suicide risk are not relevant to a determination as to whether PFC Manning committed the charged offenses and if so, what the disposition of those charges should be.
- b. A copy of adverse administrative or UCMJ actions, and all supporting documentation and rebuttal materials, based upon the AR 15-6 investigation conducted by LTG Caslen or any other governmental investigation – this evidence is not relevant to the form of the charges, the truth of the charges, or information as may be necessary to make an informed recommendation as to disposition; specifically, whether or not other individuals received adverse action as a result of their conduct described in that investigation (and note that there is no indication that such conduct was substantially similar to the totality of the conduct PFC Manning is alleged to have engaged in) is not relevant to a determination as to whether PFC Manning committed the charged offenses and if so, what the disposition of those charges should be.
- c. An Encase forensic image of each computer from the T-SCIF and the TOC of HHC, 2BCT, 10th Mountain Division, FOB Hammer, Iraq – this evidence is relevant as it could help establish that it was common for soldiers in these locations to place unauthorized software to these computers; however, this evidence is not reasonably available because its significance is lessened by the fact it is cumulative to the testimony of at least CPT Keay and CPT Cherepko, and as the government has indicated that it is still working to preserve this evidence, its limited significance is not outweighed by the delay of obtaining this evidence.
- d. A damage review or assessment of the alleged disclosures in this case led by Mr. Russell Travers, any communications concerning those disclosures by any governmental employee to President Obama, and any communications concerning this case by President Obama to the Departments of Defense, State, or Justice – this evidence is not relevant to the form of the charges, the truth of the charges, or information as may be necessary to make an informed recommendation as to

- disposition; specifically, the extent of the harm caused by the alleged disclosures and whether any statements by President Obama may have influenced the prosecution in this case are not relevant to a determination as to whether PFC Manning committed the charged offenses and if so, what the disposition of those charges should be.
- e. Damage assessment conducted by the Information Review Task Force and the Office of Security – this evidence is not relevant to the form of the charges, the truth of the charges, or information as may be necessary to make an informed recommendation as to disposition; specifically, the extent of the harm caused by the charged offenses is not relevant to a determination as to whether PFC Manning committed the charged offenses and if so, what the disposition of those charges should be. Additionally, I understand from the 12 December 2011 telephone conference with CPT Fein and Mr. Coombs that the government does not have the authority to disclose damage assessments and thus I conclude that any evidence of damage assessments is not reasonably available.
 - f. Collateral investigations by the Department of State, the FBI, DIA, the Office of the National Counterintelligence Executive, and the CIA – this evidence is not reasonably available; as this was a joint investigation, this evidence is cumulative with evidence of the CID case file, and its limited significance is not outweighed by the delay in obtaining this evidence.
 - g. The Department of Justice investigation into the alleged disclosures as referenced by Attorney General Holder, including grand jury material, 18 U.S.C. Section 2703(d) orders, and search warrants – this evidence is not reasonably available; as this was a joint investigation, this evidence is cumulative with evidence of the CID case file, and also the government has said it has no knowledge of grand jury testimony or search warrants from the Department of Justice, which leads to a conclusion that the limited significance of this evidence is not outweighed by the delay in obtaining it.
 - h. The Department of State damage assessment review conducted by its task force of over 120 individuals – this evidence is not relevant to the form of the charges, the truth of the charges, or information as may be necessary to make an informed recommendation as to disposition; specifically, the extent of the harm caused by the charged offenses is not relevant to a determination as to whether PFC Manning committed the charged offenses and if so, what the disposition of those charges should be. Additionally, I understand from the 12 December 2011 telephone conference with CPT Fein and Mr. Coombs that the government does not have the authority to disclose damage assessments and thus I conclude that any evidence of damage assessments is not reasonably available.
 - i. The Damage Assessment of Compromised Information required to be submitted to the SSO under DoD 5105.21-M-1 once an SCI security official determines that a security violation has occurred, and the final security investigation violation report submitted to the SSO DoD/DIA under DoD 5105.21-M-1 – this evidence is not reasonably available because the government has indicated that this regulation only applies to violations involving the compromise of Sensitive Compartmented Information material and there is currently no evidence indicating a compromise of such material in this case.

AFRC-MJVA

SUBJECT: Determinations as to Defense Requested Evidence

2. Please address all questions or concerns to the undersigned at paul.r.almanza@us.army.mil and paul.almanza@usdoj.gov.

3. POC for this memorandum is the undersigned.

PAUL R. ALMANZA
LTC, JA, USAR
Investigating Officer

CF:

MAJ Matthew Kemkes (at matthew.kemkes@us.army.mil)

CPT(P) Paul Bouchard (at paul.r.bouchard.mil@mail.mil)

CPT Ashden Fein (at ashden.fein@jfhqncr.northcom.mil)

Mr. David Coombs (at coombs@armycourt martialdefense.com)

CPT JoDean Morrow (at jodean.morrow@jfhqncr.northcom.mil)

CPT Angel Overgaard (at angel.overgaard@jfhqncr.northcom.mil)

CPT Jeffrey Whyte (at jeffrey.whyte@jfhqncr.northcom.mil)

LTC Mark Holzer (at mark.holzer@us.army.mil)

Attachment L

UNITED STATES

v.

MANNING, Bradley E., PFC

U.S. Army. xxx-xx-xx

Headquarters and Headquarters Company, U.S.

Army Garrison, Joint Base Myer-Henderson Hall,

Fort Myer, VA 22211

**DEFENSE DISCOVERY
REQUEST**

DATED: 20 January 2012

1. In accordance with the Rules for Courts-Martial and the Military Rules of Evidence, Manual for Courts-Martial, United States, 2008, Article 46, Uniform Code of Military Justice, and other applicable law, request for discovery is hereby made for the charged offenses in the case of United States v. Bradley E. Manning.

2. The Defense requests that the Government respond to each item listed in its previous discovery requests of 29 October 2010, 15 November 2010, 8 December 2010, 10 January 2011, 19 January 2011, 16 February 2011, 13 May 2011, 13 October 2011, 15 November 2011, and 16 November 2011 and to also respond to the following additional discovery:

a) Complete contact information for Mr. Robert E. Betz, USCYBERCOM Chief Classification Advisory Officer;

b) Complete contact information for Mr. Patrick F. Kennedy, Under Secretary of State for Management;

c) Complete contact information for Mr. Robert Roland;

d) Complete contact information for the individual that completed the Classification Review for the item charged in Specification 15 of Charge II. The Defense also requests a copy of the Classification Review for the item charged in Specification 15 of Charge II.

3. The Defense requests that the Government respond to the following additional questions regarding previously requested discovery:

a) Does the Government possess any report, damage assessment or recommendation by the WikiLeaks Task Force or any other CIA member concerning the alleged leaks in this case? If yes, please indicate why these items have not been provided to the Defense. If no, please indicate why the Government has failed to secure these items;

b) Does the Government possess any report, damage assessment, or recommendation as a result of any joint investigation with the Federal Bureau of Investigation (FBI) or any other governmental agency concerning the alleged leaks in this case? If yes, please indicate why these

items have not been provided to the Defense. If no, please indicate why the Government has failed to secure these items;

c) Does the Government possess any report, damage assessment, or recommendation by the Information Review Task Force (IRTF) concerning the alleged leaks in this case? If yes, please indicate why these items have not been provided to the Defense. If no, please indicate why the Government has failed to secure these items;

d) Does the Government possess any report, damage assessment, or recommendation by the Department of Justice concerning the alleged leaks in this case? If yes, please indicate why these items have not been provided to the Defense. If no, please indicate why the Government has failed to secure these items;

e) Does the Government possess any report, damage assessment, or recommendation by the Department of State concerning the alleged leaks in this case? If yes, please indicate why these items have not been provided to the Defense. If no, please indicate why the Government has failed to secure these items;

f) Does the Government possess any report, damage assessment, or recommendation by the Office of the Director of National Intelligence concerning the alleged leaks in this case? If yes, please indicate why these items have not been provided to the Defense. If no, please indicate why the Government has failed to secure these items;

g) Does the Government possess any report, damage assessment, or recommendation by the Defense Intelligence Agency concerning the alleged leaks in this case? If yes, please indicate why these items have not been provided to the Defense. If no, please indicate why the Government has failed to secure these items;

h) Does the Government possess any report, damage assessment, or recommendation by the Office of the National Counterintelligence Executive concerning the alleged leaks in this case? If yes, please indicate why these items have not been provided to the Defense. If no, please indicate why the Government has failed to secure these items;

4. The Defense requests that the Government provide notice in writing if it does not intend to comply with any specific provision of this request.

5. It is understood that this is a continuing request.

6. A copy of this request was served on Trial Counsel by email on 20 January 2012.


DAVID EDWARD COOMBS
Civilian Defense Counsel

Attachment M



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
U.S. ARMY MILITARY DISTRICT OF WASHINGTON
210 A STREET
FORT LESLEY J. MCNAIR, DC 20319-5013

ANJA-CL

27 January 2012

MEMORANDUM FOR Mr. David E. Coombs, Civilian Defense Counsel

SUBJECT: Response to Defense Request for Discovery, 29 October 2010 – United States v. PFC Bradley Manning

1. The below responses to the defense discovery request account for the ongoing national security concerns of this case, the ongoing law enforcement investigation(s) and comply with the limitations of applicable Executive Orders.

2. Discovery Response.

a. A copy of any handwritten, typed or recorded statements by the accused or any other potential witness in connection with the investigation of this case made to representatives of the government to include summaries of conversations with representatives of the government, which were not attached as allied papers at the time the charges were preferred. *See* Discovery Request, paragraph 1(a).

RESPONSE: The United States has provided all matters requested that are in its possession and that the United States has authority to disclose. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

b. The contents of all statements, oral or written, made by the accused that are relevant to the case, known to the trial counsel, and within control of the armed forces. *See* Discovery Request, paragraph 1(b).

RESPONSE: The United States has provided all matters requested that are in its possession and that the United States has authority to disclose. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

c. Any statement made by the accused that the trial counsel intends to introduce into evidence, reduced into writing and disclosed. M.R.E. 304(d)(2)(a). *See* Discovery Request, paragraph 1(b).

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

ANJA-CL

SUBJECT: Response to Defense Request for Discovery, 29 October 2010 – United States v. PFC Bradley Manning

d. Any derivative evidence of the accused's statements. M.R.E. 304(d)(2)(c). Specifically, the complete Instant Message chat log and any emails allegedly sent between the Accused and Mr. Adrian A. Lamo. See Discovery Request, paragraph 1(b).

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

e. Disclosure of all evidence seized from the person or property of the accused, whether believed to be owned by the accused or anyone else that the prosecution intends to offer into evidence against the accused at trial. See Discovery Request, paragraph 1(c).

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

f. The results of any examination of computers allegedly used or owned by PFC Manning. See Discovery Request, paragraph 1(c).

RESPONSE: The United States has provided matters responsive to this request, including an Encase forensic image of all electronic storage devices, including hard drives, examined by law enforcement that were included in the forensic reports. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and a basis for its request.

g. Copies of all medical and mental reports relating to the accused. Specifically, the defense requests copies of any behavioral health assessments of PFC Manning both before, during, and after the deployment to Iraq. See Discovery Request, paragraph 1(d).

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

h. Any known evidence tending to diminish the credibility of any witness including, but not limited to, prior convictions under M.R.E. 609, or evidence of other character, conduct, or bias bearing on witness credibility under M.R.E. 608. See Discovery Request, paragraph 1(e).

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

i. The name and contact information for any law enforcement agent working with Mr. Adrian A. Lamo. See *Brady v. Maryland*, 373 U.S. 83 (1963); *United States v. Agurs*, 427 U.S. 97 (1976). See Discovery Request, paragraph 1(e).

SUBJECT: Response to Defense Request for Discovery, 29 October 2010 – United States v. PFC Bradley Manning

RESPONSE: The United States has provided matters responsive to this request, including the name and contact information of any CID agent working with Mr. Lamo. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and a basis for its request.

j. Any other evidence in the possession of the government favorable to the accused, tending to negate the guilt of the accused of any offense charged, or reduce the punishment for any offense charged. *See* Discovery Request, paragraph 1(e).

RESPONSE: The United States understands its obligations under *Brady* and R.C.M. 701(a)(6) and will comply with those requirements if the United States becomes aware of any such material.

k. The names and contact information for all government investigators who have participated or who are presently participating in the investigation of the case. *See* Discovery Request, paragraph 1(f).

RESPONSE: The United States has provided all matters requested that are in its possession. The defense is invited to contact SAC Kenneth King at (571) 305-4462 or (571) 480-0460 for additional information.

l. Any evidence of other crimes, wrongs, or acts which the prosecution seeks to introduce for any purpose whatsoever. M.R.E. 404(b). *See* Discovery Request, paragraph 1(g).

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

m. All personal or business notes, memorandums, and writings prepared by investigators in the case which are not furnished pursuant to any other provisions of this request. *See* Discovery Request, paragraph 1(h).

RESPONSE: The United States will not provide the requested information. The defense has failed to provide an adequate basis for its request. The United States will reconsider this request when provided with an adequate basis and an authority that obligates the United States to provide the requested information.

n. The military status of all witnesses. Where applicable, the defense requests the date of separation from the Army, and the discharge provisions used to effect such discharge if for other than completion of the obligated term of service, including any immunity or leniency pertaining to any witness or potential witness. M.R.E. 301(c)(2). *See* Discovery Request, paragraph 1(i).

ANJA-CL

SUBJECT: Response to Defense Request for Discovery, 29 October 2010 – United States v. PFC Bradley Manning

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

o. The Tactical Sensitive Compartment Information (T-SCIF) accreditation packet for FOB Hammer. *See* Discovery Request, paragraph 1(j).

RESPONSE: The United States presently has no knowledge of any such records. The defense is invited to renew its request with more specificity and an adequate basis for its request.

p. The SOP for the T-SCIF at FOB Hammer. *See* Discovery Request, paragraph 1(j).

RESPONSE: The United States presently has no knowledge of any such records. The defense is invited to renew its request with more specificity and an adequate basis for its request.

q. The name and contact information for the security manager at the T-SCIF at FOB Hammer. *See* Discovery Request, paragraph 1(j).

RESPONSE: 1LT Elizabeth Fields and SFC Paul Adkins were the Special Security Representatives (SSR).

r. A copy of the security classification guide for the Tactical Sensitive Compartment Information (T-SCIF) at FOB Hammer. *See* Discovery Request, paragraph 1(j).

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

s. PFC Manning's training records related to his MOS. *See* Discovery Request, paragraph 1(j).

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

t. Any documentation PFC Manning has signed dealing with information security. *See* Discovery Request, paragraph 1(j).

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

u. A list of any refresher training or in-country training PFC Manning received on information security. *See* Discovery Request, paragraph 1(j).

ANJA-CL

SUBJECT: Response to Defense Request for Discovery, 29 October 2010 – United States v. PFC Bradley Manning

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

v. Any evidence of prior Article 15 action, civilian or military convictions, and adverse administrative actions relating to any of the government's witnesses, defense witnesses, or the accused. *See* Discovery Request, paragraph 1(k).

RESPONSE: The United States has provided matters responsive to this request including multiple Article 15-6 investigations and the list of persons who were flagged. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and a basis for its request.

w. Any evidence that the government intends to use for impeachment purposes of the accused, or any other witness. This includes any character evidence the government intends to introduce at trial under M.R.E. 404. *See* Discovery Request, paragraph 1(k).

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

x. A list of all witnesses the prosecution intends to call during the Article 32 along with their addresses and phone numbers and copies of all prior written statements. *See* Discovery Request, paragraph 1(i).

RESPONSE: The Article 32 commenced on 22 December 2011 and the Investigating Officer's recommendation was made on 12 January 2012.

y. Copies of all business and official records which the prosecution intends to introduce either during the Article 32 or at trial. *See* Discovery Request, paragraph 1(m).

RESPONSE: The Article 32 commenced on 22 December 2011 and the Investigating Officer's recommendation was made on 12 January 2012. The United States will provide this information for the court-martial pursuant to the schedule outlined by the military judge.

z. A list of all exhibits the government plans to utilize at the Article 32 or at trial. *See* Discovery Request, paragraph 1(n).

RESPONSE: The Article 32 commenced on 22 December 2011 and the Investigating Officer's recommendation was made on 12 January 2012. The United States will provide this information for the court-martial pursuant to the schedule outlined by the military judge.

ANJA-CL

SUBJECT: Response to Defense Request for Discovery, 29 October 2010 – United States v. PFC Bradley Manning

aa. Any evidence, testimony, or witnesses the government intends to use at the Article 32 or at trial that have been obtained through grants of immunity, or any other concessions being granted to a witness, the content of such testimony or evidence, and the terms of any such grants of immunity or concessions. See Discovery Request, paragraph 1(o).

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

bb. All documents, memoranda, or records of conversations pertaining to this case, whether prepared by investigators, commanders, convening authority or any other person. See Discovery Request, paragraph 1(p).

RESPONSE: The United States will not provide the requested information. The defense has failed to provide an adequate basis for its request. The United States will reconsider this request when provided with an adequate basis and an authority that obligates the United States to provide the requested information.

cc. A complete copy of the CID file(s) (including but not limited to the so called "right" and "left side") interviews, notes, and Agent Activity Summaries or any other files maintained by a law enforcement agency at Fort Myer, Fort Detrick, Contingency Operating Station Hammer, or any other installation that participated in the investigation of this case. See Discovery Request, paragraph 1(p)(1).

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to review any remaining information, including Agent's Activity Summary reports and related materials, at CCIU. Contact SAC Kenneth King at (571) 305-4462 or (571) 480-0460 for this information.

dd. A complete copy of any other documents or files pertaining to the above named individual. See Discovery Request, paragraph 1(p)(2).

RESPONSE: The United States has provided matters responsive to this request, including the entire CID case file. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and a basis for its request.

ee. A complete copy of any emails or memorandums relating to the referral of charges in this case or to the level of court-martial. See Discovery Request, paragraph 1(p)(3).

RESPONSE: The United States understands its obligations under R.C.M. 701(a)(1) and will comply with this requirement as soon as practicable. If information the United States provides under R.C.M. 701(a)(1) is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

ANJA-CL

SUBJECT: Response to Defense Request for Discovery, 29 October 2010 – United States v. PFC Bradley Manning

ff. Any writings used to refresh the memory of any government witness. MRE 612. See Discovery Request, paragraph 1(q).

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

gg. Copies of the report concerning the polygraph examinations administered to any person related to this case. This includes copies of statements taken after the polygraph exam. See Discovery Request, paragraph 1(r).

RESPONSE: The United States presently has no knowledge of any such records. The defense is invited to renew its request with more specificity and an adequate basis for its request.

hh. A copy of any Freedom of Information Act (FOIA) request and any response or internal discussions of any such FOIA request that is related to the classified video charged in Specification 1, Charge I and Specification 1, 2, and 5 of Charge I. See Discovery Request, paragraph 1(s).

RESPONSE: The United States will not provide the requested information. The United States is unaware of any information in this request that is relevant and necessary to the charges in this case that require disclosure. The defense is invited to renew its request with more specificity and an adequate basis for its request.

3. The United States understands its continuing discovery obligation and acknowledges its requirements under Article 46, UCMJ, the Rules for Courts-Martial, and relevant case law.



ASHDEN FEIN
CPT, JA
Trial Counsel



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
U.S. ARMY MILITARY DISTRICT OF WASHINGTON
210 A STREET
FORT LESLEY J. MCNAIR, DC 20319-5013

ANJA-CL

27 January 2012

MEMORANDUM FOR Mr. David E. Coombs, Civilian Defense Counsel

SUBJECT: Response to Defense Request for Discovery, 15 November 2010 – United States v. PFC Bradley Manning

1. The below responses to the defense discovery request account for the ongoing national security concerns of this case, the ongoing law enforcement investigation(s), and comply with the limitations of applicable Executive Orders.

2. Discovery Response.

a. The names and contact information for all government investigators who have participated or who are presently participating in the investigation of the case. Specifically, the names of the investigators and an inventory of the items seized from the home of Ms. Debra Van Alstyne, 1492 Selworthy Road, Potomac, MD 20854 on 2 November 2010. See Discovery Request, paragraph 2(a).

RESPONSE: The United States has provided all matters requested that are in its possession. The defense is invited to contact SAC Kenneth King at (571) 305-4462 or (571) 480-0460 for additional information.

b. A list of items seized from Mr. David House and a copy of all reports or analysis of the items seized by the Department of Homeland Security, the Federal Bureau of Investigation, or any other government agency on 3 November 2010. See Discovery Request, paragraph 2(a).

RESPONSE: The United States will not provide the requested information. The defense has failed to provide an adequate basis for its request. The United States will reconsider this request when provided with an adequate basis and an authority that obligates the United States to provide the requested information.

c. A copy of all field interviews and reports conducted by the FBI or any other governmental organization involving witnesses from Boston, Massachusetts or any other city from 21 May 2010 to the present involved in this case. See Discovery Request, paragraph 2(a).

RESPONSE: The United States will not provide the requested information. The defense has failed to provide an adequate basis for its request. The United States will reconsider this request when provided with an adequate basis and an authority that obligates the United States to provide the requested information.

ANJA-CL

SUBJECT: Response to Defense Request for Discovery, 15 November 2010 – United States v. PFC Bradley Manning

d. The entire counseling packet for PFC Manning. Specifically, any counseling or assessments done of PFC Manning by his chain of command, MSG Paul Adkins, CPT Casey Martin, SSG Peter Bigelow, CPT Matthew Freeburg, or ISG Mark Woodworth. *See* Discovery Request, paragraph 2(b).

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

e. All Behavioral Health Assessments (BHA) or mental evaluations of PFC Manning, previously requested by the defense on 29 October 2010. The defense requests any assessment by CAPT Kenneth J. Iverson, CAPT Bruce Balfour, CAPT William Heister, CPT Eden Critchfield, CPT Dale Hill or any other individual who has evaluated or commented on PFC Manning's mental state at any time. Specifically, the defense requests the 12 May and 28 May 2010 BHA. *See* Discovery Request, paragraph 2(c).

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

f. All assessments for POI recommendations to the Quantico Confinement Facility. *See* Discovery Request, paragraph 2(c).

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

g. Any and all documents or emails considered by CPT Kevin Ley as the military magistrate to support his search and seizure authorizations. *See* Discovery Request, paragraph 2(d).

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

h. Recorded video footage of when PFC Manning collapsed in confinement as referenced at 000095. *See* Discovery Request, paragraph 2(e).

RESPONSE: This video footage does not exist. *See* BATES 00011639 (Sworn Statement, MA2 Jonathan Kemper, dated 19 February 2011).

i. Any other recorded audio or video footage of PFC Manning while in confinement in Iraq, Kuwait, or the United States. *See* Discovery Request, paragraph 2(e).

ANJA-CL

SUBJECT: Response to Defense Request for Discovery, 15 November 2010 – United States v. PFC Bradley Manning

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

j. Network logs for all computers searched by CPT Thomas Cherepko or any other government employee or investigator as referenced at 000186-87. See Discovery Request, paragraph 2(f).

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

k. The application, Security and System Network logs obtained from PFC Blake Dodley as referenced at 0000187. See Discovery Request, paragraph 2(g).

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

l. The results of SA Calder L. Robertson III and SA David S. Shaver's analysis of any computers analyzed in this case. See Discovery Request, paragraph 2(h).

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

m. Copies of any investigative notes or assessments by Computer Crimes Investigative Unit (CCIU). See Discovery Request, paragraph 2(h).

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to review any remaining information, including Agent's Activity Summary reports and related materials, at CCIU. Contact SAC Kenneth King at (571) 305-4462 or (571) 480-0460 for this information.

n. Names of all individuals from the CCIU or any other government agency that have performed or are performing any computer forensic analysis in this case. See Discovery Request, paragraph 2(h).

RESPONSE: The United States has provided all matters requested that are in its possession. The defense is invited to contact SAC Kenneth King at (571) 305-4462 or (571) 480-0460 for additional information.

o. All documentation or information provided by the government to LTC Craig Merutka. See Discovery Request, paragraph 2(i).

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

- p. Copies of the chat logs referenced at 000455. *See* Discovery Request, paragraph 2(f).

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

- q. Copies of the CCIU reports referenced at 000463. *See* Discovery Request, paragraph 2(i).

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

r. The results of inquiry/investigation and all discussions and assessments done in compliance with Department of Defense (DoD) Directive 5210.50; DoD Directive 5200.1, Chapter 10; DoD S-5105.21-M-1; DoD Instruction 5240.4; and Executive Order 13526. Specifically, the defense requests the answers to the following required investigative determinations by the above DoD Directive, Instruction, and Executive Order: When, where, and how did the incident occur? What persons, situations, or conditions caused or contributed to the incident? What classified information was compromised? If a compromise occurred, what specific classified information and/or material was involved? If classified information is alleged to have been lost, what steps were taken to locate the material? In what specific media article or program did the classified information appear? To what extent was the compromised information disseminated? Was the information properly classified? Was the information officially released? Are there any leads to be investigated that might lead to identification of the person(s) responsible for the compromise? *See* Discovery Request, paragraph 2(j).

RESPONSE: The United States presently has no knowledge of any such records. The defense is invited to renew its request with more specificity and an adequate basis for its request.

s. The defense also requests copies of any notification to the Original Classification Authority (OCA), the contact information for the OCAs, and the required answers by DoD Directive that states when notified of the compromise of classified information or material, the original classification authority for that information or material shall: Verify the classification and duration of classification initially assigned to the information; Reevaluate the classification of the information to determine whether the classification should be continued or changed; and complete a damage assessment in accordance with DoD Instruction and Directive. The verification, reevaluation, and damage assessment process is required by DoD Directive to be

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SUBJECT: Response to Defense Request for Discovery, 15 November 2010 – United States v. PFC Bradley Manning

completed as soon as possible following notification of a compromise. See Discovery Request, paragraph 2(k).

RESPONSE: The United States presently has no knowledge of any such records. The defense is invited to renew its request with more specificity and an adequate basis for its request.

3. The United States understands its continuing discovery obligation and acknowledges its requirements under Article 46, UCMJ, the Rules for Courts-Martial, and relevant case law.


ASHDEN FEIN
CPT, JA
Trial Counsel

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ANJA-CL

27 January 2012

MEMORANDUM FOR Mr. David E. Coombs, Civilian Defense Counsel

SUBJECT: Response to Defense Request for Discovery, 8 December 2010 – United States
PFC Bradley Manning

1. The below responses to the defense discovery request account for the ongoing national security concerns of this case, the ongoing law enforcement investigation(s), and comply with the limitations of applicable Executive Orders.

2. Discovery Response.

a. The names and contact information for all government investigators who have participated or who are presently participating in the investigation of the case, previously requested on 29 October and 15 November 2010. *See* Defense Request, paragraph 2(a).

RESPONSE: The United States has provided all matters requested that are in its possession. The defense is invited to contact SAC Kenneth King at (571) 305-4462 or (571) 480-0460 for additional information.

b. Contact information for SA Myung Lim from the Department of Defense and SA Richard Bowen from the Army Computer Crimes Unit. *See* Defense Request, paragraph 2(a).

RESPONSE: The United States has provided all matters requested that are in its possession. The defense is invited to contact SAC Kenneth King at (571) 305-4462 or (571) 480-0460 for additional information.

c. An inventory of the items seized from the home of Mr. Paul Francia at 601 Hazelwood Terrace, Rochester, New York 14609. *See* Defense Request, paragraph 2(a).

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

d. All forensic results and investigative reports by the Department of State regarding the information obtained by Wikileaks as referenced by Assistant Secretary of State for Public Affairs P.J. Crowley. *See* Defense Request, paragraph 2(b).

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RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

e. Any specific damage assessment by the Department of State regarding the disclosure of the diplomatic cables by Wikileaks. *See* Defense Request, paragraph 2(b).

RESPONSE: The United States will provide a response to this request no later than 3 February 2012.

f. Any assessment, report, e-mail, or document by Secretary of State Hillary Clinton regarding the disclosures of diplomatic cables by Wikileaks. *See* Defense Request, paragraph 2(b).

RESPONSE: The United States will not provide the requested information. The defense has failed to provide an adequate basis for its request. The United States will reconsider this request when provided with an adequate basis and an authority that obligates the United States to provide the requested information.

g. Any report, e-mail or document discussing the need for the State Department to disconnect access to its files from the government's classified network. *See* Defense Request, paragraph 2(b).

RESPONSE: The United States will not provide the requested information. The defense has failed to provide an adequate basis for its request. The United States will reconsider this request when provided with an adequate basis and an authority that obligates the United States to provide the requested information.

h. All forensic results and investigative reports by the Department of Defense regarding the information obtained by Wikileaks. *See* Defense Request, paragraph 2(c).

RESPONSE: The United States has provided all forensic results, law enforcement investigative reports, and administrative investigations by the Department of Defense. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

i. Results of any joint investigation with the Federal Bureau of Investigation (FBI) as referenced by Secretary of Defense Robert M. Gates. *See* Defense Request, paragraph 2(c).

RESPONSE: The United States will not provide the requested information. The defense has failed to provide an adequate basis for its request. The United States will reconsider this request when provided with an adequate basis and an authority that obligates the United States to provide the requested information.

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SUBJECT: Response to Defense Request for Discovery, 8 December 2010 – United States v. PFC Bradley Manning

j. Any specific damage assessment by the Department of Defense regarding the disclosure of classified documents and videos, the subject of this case, by Wikileaks. See Defense Request, paragraph 2(c).

RESPONSE: The United States will provide a response to this request no later than 8 February 2012.

k. Any and all documentation related to the Department of Justice investigation into the alleged leaks by Wikileaks as referenced by Attorney General of the United States Eric H. Holder. See Defense Request, paragraph 2(d).

RESPONSE: The United States has provided matters responsive to this request, including all grand jury information from the Eastern District of Virginia that is in its possession and that the United States has authority to disclose. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

l. Any and all documentation related to President Barack H. Obama's order for an investigation and a government wide-review of how agencies safeguard sensitive information. See Defense Request, paragraph 2(e).

RESPONSE: The United States will not provide the requested information. The defense has failed to provide an adequate basis for its request. The United States will reconsider this request when provided with an adequate basis and an authority that obligates the United States to provide the requested information.

m. Any and all documents related to the steps the administration is considering regarding these leaks and the nature of the criminal investigation underway into how the documents were made public as referenced by Robert Gibbs, the White House spokesman. See Defense Request, paragraph 2(e).

RESPONSE: The United States has provided matters responsive to this request, including all files of Department of Defense law enforcement and other investigations that the United States is aware of. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

n. Any assessment given, or discussions concerning, the Wikileaks disclosures by any member of the government to President Obama. Any e-mail, report, assessment, directive, or discussion by President Obama to the Department of Defense, Department of State or Department of Justice. See Defense Request, paragraph 2(f).

RESPONSE: The United States presently has no knowledge of any such records, outside publicly made statements through press conferences or media organizations, equally

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accessible by the defense. The defense is invited to renew its request with more specificity and an adequate basis for its request.

o. Any and all documents relating to the Government Task Force created to review the various Wikileaks releases for potentially damaging information prior to the actual releases. This Task Force apparently had over 120 members reviewing the documents that were either released or pending release to determine the possible harm to national security. See Defense Request, paragraph 2(g).

RESPONSE: The United States will not provide the requested information. The defense has failed to provide an adequate basis for its request. The United States will reconsider this request when provided with an adequate basis and an authority that obligates the United States to provide the requested information.

p. The results of any investigation or review by Mr. Russell T. Miller, who has been appointed by President Obama to head an interagency committee assigned to assess the damage caused by Wikileaks exposures and to organize efforts to tighten security measures in government agencies. See Defense Request, paragraph 2(h).

RESPONSE: The United States will not provide the requested information. The defense has failed to provide an adequate basis for its request. The United States will reconsider this request when provided with an adequate basis and an authority that obligates the United States to provide the requested information.

q. Any and all documentation related to the Pentagon's review on the policy and technological shortfalls that led to the Wikileaks disclosures as referenced by Pentagon spokesman Bryan Whitman. See Defense Request, paragraph 2(i).

RESPONSE: The United States will not provide the requested information. The defense has failed to provide an adequate basis for its request. The United States will reconsider this request when provided with an adequate basis and an authority that obligates the United States to provide the requested information.

r. Any and all documentation related to the Central Intelligence Agency (CIA) investigation of Wikileaks announced by CIA Director Leon Panetta and any internal or external memorandums addressing the investigation of Wikileaks, PFC Bradley Manning or the nature of the Office of Security's investigation into these matters. See Defense Request, paragraph 2(j).

RESPONSE: The United States will not provide the requested information. The defense has failed to provide an adequate basis for its request. The United States will reconsider this request when provided with an adequate basis and an authority that obligates the United States to provide the requested information.

SUBJECT: Response to Defense Request for Discovery, 8 December 2010 – United States v. PFC Bradley Manning

s. Any and all documentation relating to the government's position of taking a hard line on unauthorized leaks of information, as demonstrated by the prosecutions of a former National Security Agency official, a Federal Bureau of Investigation linguist, and a State Department contractor and referenced by CIA Director Leon Panetta. See Defense Request, paragraph 2(k).

RESPONSE: The United States presently has no knowledge of any such records. The defense is invited to renew its request with more specificity and an adequate basis for its request.

t. Any and all memorandums, e-mails, or other references by Congressmen, Senators, or government officials concerning the disposition of this case or the need to punish PFC Bradley Manning. See Defense Request, paragraph 2(k).

RESPONSE: The United States presently has no knowledge of any such records, outside publicly made statements through press conferences or media organizations, equally accessible by the defense. The defense is invited to renew its request with more specificity and an adequate basis for its request.

u. Any and all documentation, e-mails, or reports given to the Summary Court-Martial Convening Authority, the General Court-Martial Convening Authority, or the Staff Judge Advocate concerning the disposition of PFC Bradley Manning's case or the nature of the charges or possible charges against PFC Manning. Specifically, any attempt to influence the independent discretion of anyone involved in the military justice process. See Defense Request, paragraph 2(l).

RESPONSE: The United States presently has no knowledge of any such records. The defense is invited to renew its request with more specificity and an adequate basis for its request.

v. Any and all documents or observation notes by employees of the Quantico confinement facility relating to PFC Bradley Manning. See Defense Request, paragraph 2(m).

RESPONSE: The United States has provided matters responsive to this request, including progress reports, visitation documents, and command visits. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and a basis for its request.

w. The results of the 15-6 investigation into the government's improper release of classified information to the defense. See Defense Request, paragraph 2(n).

RESPONSE: The United States will not provide the requested information. The defense has failed to provide an adequate basis for its request. The United States will reconsider this request when provided with an adequate basis and an authority that obligates the United States to provide the requested information.

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SUBJECT: Response to Defense Request for Discovery, 8 December 2010 – United States v. PFC Bradley Manning

3. The United States understands its continuing discovery obligation and acknowledges its requirements under Article 46, UCMJ, the Rules for Courts-Martial, and relevant case law.



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REPLY TO
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27 January 2012

MEMORANDUM FOR Mr. David E. Coombs, Civilian Defense Counsel

SUBJECT: Response to Defense Request for Discovery, 10 January 2011 – United States v. PFC Bradley Manning

1. The below responses to the defense discovery request account for the ongoing national security concerns of this case, the ongoing law enforcement investigation(s), and comply with the limitations of applicable Executive Orders.

2. Discovery Response.

a. Any information relating to 18 U.S.C. § 2703(d) order or any search warrant by the government of Twitter, Facebook, Google or any other social media site. Any metadata, MD5 hash marks or other unique identifying information obtained from the 2703(d) order or search warrant. See Discovery Request, paragraph 2(a).

RESPONSE: The United States has provided matters responsive to this request, including applications for an order under 18 U.S.C. § 2703 and search warrants. See BATES 00036691-00036739, 00375638-00375676. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

b. The results and all supporting documents for the investigation conducted by LTG Robert Caslen Jr. The report is directed by the Secretary of the Army John McHugh and is supposed to be completed by 1 February 2011. It will address how PFC Bradley Manning was selected for his job, how he was trained, whether his superiors missed warning signs that he was downloading documents that he did not need to read and how PFC Manning allegedly released the documents. See Discovery Request, paragraph 2(b).

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

c. The results of any inquiry and testimony taken by House of Representative oversight committee led by Representative Darrell Issa. The committee is due to look into Wikileaks, the actions of Attorney General Eric Holder, and the investigation of PFC Bradley Manning. See Discovery Request, paragraph 2(c).

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SUBJECT: Response to Defense Request for Discovery, 10 January 2011 – United States v. PFC Bradley Manning

RESPONSE: The United States has no knowledge of any such records, outside publicly made statements through press conferences or media organizations, equally accessible by the defense. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

d. A copy of all Agents Investigation Reports maintained under CID Regulation 195-7 not previously provided to the defense. A copy of all agent notes, other governmental investigative reports and sworn statements. See Discovery Request, paragraph 2(d).

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to review any remaining information, including Agent's Activity Summary reports and related materials, at CCIU. Contact SAC Kenneth King at (571) 305-4462 or (571) 480-0400 for this information.

3. The United States understands its continuing discovery obligation and acknowledges its requirements under Article 46, UCMJ, the Rules for Courts-Martial, and relevant case law.

ASHLEY FEIN
C. J. A.
Trial Counsel



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ANJA-CL

27 January 2012

MEMORANDUM FOR Mr. David E. Coombs, Civilian Defense Counsel

SUBJECT: Response to Defense Request for Discovery, 16 February 2011 – United States
PFC Bradley Manning

1. The below responses to the defense discovery request account for the ongoing national security concerns of this case, the ongoing law enforcement investigation(s) and comply with the limitations of applicable Executive Orders.

2. Discovery Response.

a. The defense requests the names of the Soldiers who have been flagged, the nature for why they were flagged, who imposed the flag, and any other derogatory information relating to this case to include, but not limited to: any reprimand (oral or written), UCMJ action, or administrative separation actions. See Discovery Request, paragraph 2(a).

RESPONSE: The United States has provided all matters requested that are in its possession. See BATES 00015863. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

b. The defense requests a copy of any and all audio or video tapes of PFC Manning at any time whether they be from in person visits or from telephonic conversations. See Discovery Request, paragraph 2(b).

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

c. A copy of the latest CID investigation report and all Agents Investigation Reports maintained under CID Regulation 195-1 not previously provided to the defense. Additionally, a copy of all agent notes, other governmental investigative reports, and sworn statements. See Discovery Request, paragraph 2(c).

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to review any remaining information, including Agent's Activity Summary reports and related materials, at CCIU. Contact SAC Kenneth King at (571) 305-4462 or (571) 480-0460 for this information.

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SUBJECT: Response to Defense Request for Discovery, 16 February 2011 – United States v. PFC Bradley Manning

d. A roster of all individuals assigned to HHC, 2BCT, 10th Mtn Division, specifically any soldier assigned in the S2 Section of 2BCT. The defense requests full name, rank, email and phone contact information for each individual. *See* Discovery Request, paragraph 2(d).

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to refine its request with more specificity and an adequate basis for its request.

e. Access to all classified information that the government intends to use in this case. To include any damage assessment or information review conducted by any governmental agency or at the direction of a governmental agency. *See* Discovery Request, paragraph 2(d).

RESPONSE: The United States will provide a response to this request no later than 3 February 2012.

3. The United States understands its continuing discovery obligation and acknowledges its requirements under Article 46, UCMJ, the Rules for Courts-Martial, and relevant case law.

ASHDEN FEIN
CPT, JA
Trial Counsel



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ANJA-CL

27 January 2012

MEMORANDUM FOR Mr. David E. Coombs, Civilian Defense Counsel

SUBJECT: Response to Defense Request for Discovery, 13 May 2011 – United States v. Bradley Manning

1. The below responses to the defense discovery request account for the ongoing national security concerns of this case, the ongoing law enforcement investigation(s), and comply with the limitations of applicable Executive Orders.

2. Discovery Response.

a. Any and all documents (sworn or signed statements, photographs, emails, etc.), tangible items (books, papers, etc.), and reports (investigative summaries, damage assessments, Original Classification Authority (OCA) determinations, etc.) conducted by the United States Army. See Discovery Request, paragraph 3.

RESPONSE: The United States will provide a response to this request no later than 3 February 2012.

b. Any and all documents (sworn or signed statements, photographs, emails, etc.), tangible items (books, papers, etc.), and reports (investigative summaries, damage assessments, Original Classification Authority (OCA) determinations, etc.) conducted by the Department of Defense. See Discovery Request, paragraph 3.

RESPONSE: The United States will provide a response to this request no later than 3 February 2012.

c. Any and all documents (sworn or signed statements, photographs, emails, etc.), tangible items (books, papers, etc.), and reports (investigative summaries, damage assessments, Original Classification Authority (OCA) determinations, etc.) conducted by the Department of Justice. See Discovery Request, paragraph 3.

RESPONSE: The United States will provide a response to this request no later than 3 February 2012.

d. Any and all documents (sworn or signed statements, photographs, emails, etc.), tangible items (books, papers, etc.), and reports (investigative summaries, damage assessments, Original Classification Authority (OCA) determinations, etc.) conducted by the National Security Agency. See Discovery Request, paragraph 3.

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SUBJECT: Response to Defense Request for Discovery, 13 May 2011 – United States v. PFC Bradley Manning

RESPONSE: The United States will provide a response to this request no later than 3 February 2012.

e. Any and all documents (sworn or signed statements, photographs, emails, etc.), tangible items (books, papers, etc.), and reports (investigative summaries, damage assessments, Original Classification Authority (OCA) determinations, etc.) conducted by the Defense Intelligence Agency. See Discovery Request, paragraph 3.

RESPONSE: The United States will provide a response to this request no later than 3 February 2012.

f. Any and all documents (sworn or signed statements, photographs, emails, etc.), tangible items (books, papers, etc.), and reports (investigative summaries, damage assessments, Original Classification Authority (OCA) determinations, etc.) conducted by the Department of Homeland Security Office of Intelligence and Analysis. See Discovery Request, paragraph 3.

RESPONSE: The United States will provide a response to this request no later than 3 February 2012.

g. Any and all documents (sworn or signed statements, photographs, emails, etc.), tangible items (books, papers, etc.), and reports (investigative summaries, damage assessments, Original Classification Authority (OCA) determinations, etc.) conducted by the Central Intelligence Agency. See Discovery Request, paragraph 3.

RESPONSE: The United States will provide a response to this request no later than 3 February 2012.

h. Any and all documents (sworn or signed statements, photographs, emails, etc.), tangible items (books, papers, etc.), and reports (investigative summaries, damage assessments, Original Classification Authority (OCA) determinations, etc.) conducted by the Federal Bureau of Investigation. See Discovery Request, paragraph 3.

RESPONSE: The United States will provide a response to this request no later than 3 February 2012.

i. Any and all documents (sworn or signed statements, photographs, emails, etc.), tangible items (books, papers, etc.), and reports (investigative summaries, damage assessments, Original Classification Authority (OCA) determinations, etc.) conducted by the Bureau of Diplomatic Security. See Discovery Request, paragraph 3.

RESPONSE: The United States will provide a response to this request no later than 3 February 2012.

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SUBJECT: Response to Defense Request for Discovery, 13 May 2011 – United States v. PFC Bradley Manning

- j. Any *Brady* material in the government's possession. See Discovery Request, paragraph 4.

RESPONSE: The United States understands its obligations under *Brady* and will comply with this requirement if the United States becomes aware of any *Brady* material.

- k. Any *Jencks* material in the government's possession, specifically copies of all statements, oral or written by any witness. See Discovery Request, paragraph 4.

RESPONSE: The United States understands its obligations under *Jencks* and will comply with this requirement, if applicable.

- l. Any evidence in the government's possession that contradicts or is inconsistent with the government's theory of the case. See Discovery Request, paragraph 4.

RESPONSE: The United States will not provide the requested information. The defense has failed to provide an adequate basis for its request. The United States will reconsider this request when provided with an adequate basis and an authority that obligates the United States to provide the requested information.

3. The United States understands its continuing discovery obligation and acknowledges its requirements under Article 46, UCMJ, the Rules for Courts-Martial, and relevant case law.



ASHDEN FEIN
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ANJA-CL

27 January 2012

MEMORANDUM FOR Mr. David E. Coombs, Civilian Defense Counsel

SUBJECT: Response to Defense Request for Discovery, 13 October 2011 – United States vs. PFC Bradley Manning

1. The below responses to the defense discovery request account for the ongoing national security concerns of this case, the ongoing law enforcement investigation(s), and comply with the limitations of applicable Executive Orders.

2. Discovery Response.

a. A copy of any adverse administrative or UCMJ action, all supporting documentation, and any rebuttal materials to such action based upon the 15-6 investigation conducted by LTG Robert L. Caslen Jr. or any other governmental investigation, with regards to any individual that was the subject of such an adverse action in relation to the alleged leak of classified information in this case, including COL Miller. See Discovery Request, paragraph 1(a).

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

b. A copy of any adverse administrative or UCMJ action, all supporting documentation, and any rebuttal materials to such action based upon the 15-6 investigation conducted by LTG Robert L. Caslen Jr. or any other governmental investigation, with regards to any individual that was the subject of such an adverse action in relation to the alleged leak of classified information in this case, including COL Miller. See Discovery Request, paragraph 1(a).

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

c. A copy of any adverse administrative or UCMJ action, all supporting documentation, and any rebuttal materials to such action based upon the 15-6 investigation conducted by LTG Robert L. Caslen Jr. or any other governmental investigation, with regards to any individual that was the subject of such an adverse action in relation to the alleged leak of classified information in this case, including LTC Kerns. See Discovery Request, paragraph 1(a).

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SUBJECT: Response to Defense Request for Discovery, 13 October 2011 – United States v. PFC Bradley Manning

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

d. A copy of any adverse administrative or UCMJ action, all supporting documentation, and any rebuttal materials to such action based upon the 15-6 investigation conducted by LTC Robert L. Caslen Jr. or any other governmental investigation, with regards to any individual that was the subject of such an adverse action in relation to the alleged leak of classified information in this case, including LTC Garfield. *See* Discovery Request, paragraph 1(a).

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

e. A copy of any adverse administrative or UCMJ action, all supporting documentation, and any rebuttal materials to such action based upon the 15-6 investigation conducted by LTG Robert L. Caslen Jr. or any other governmental investigation, with regards to any individual that was the subject of such an adverse action in relation to the alleged leak of classified information in this case, including LTC Wardle. *See* Discovery Request, paragraph 1(a).

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

f. A copy of any adverse administrative or UCMJ action, all supporting documentation, and any rebuttal materials to such action based upon the 15-6 investigation conducted by LTG Robert L. Caslen Jr. or any other governmental investigation, with regards to any individual that was the subject of such an adverse action in relation to the alleged leak of classified information in this case, including MAJ Davis. *See* Discovery Request, paragraph 1(a).

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

g. A copy of any adverse administrative or UCMJ action, all supporting documentation, and any rebuttal materials to such action based upon the 15-6 investigation conducted by LTG Robert L. Caslen Jr. or any other governmental investigation, with regards to any individual that was the subject of such an adverse action in relation to the alleged leak of classified information in this case, including MAJ Graham. *See* Discovery Request, paragraph 1(a).

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

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SUBJECT: Response to Defense Request for Discovery, 13 October 2011 – United States v. PFC Bradley Manning

h. A copy of any adverse administrative or UCMJ action, all supporting documentation, and any rebuttal materials to such action based upon the 15-6 investigation conducted by LTG Robert L. Caslen Jr. or any other governmental investigation, with regards to any individual that was the subject of such an adverse action in relation to the alleged leak of classified information in this case, including MAJ Morrow. See Discovery Request, paragraph 1(a).

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

i. A copy of any adverse administrative or UCMJ action, all supporting documentation, and any rebuttal materials to such action based upon the 15-6 investigation conducted by LTG Robert L. Caslen Jr. or any other governmental investigation, with regards to any individual that was the subject of such an adverse action in relation to the alleged leak of classified information in this case, including MAJ Clausen. See Discovery Request, paragraph 1(a).

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

j. A copy of any adverse administrative or UCMJ action, all supporting documentation, and any rebuttal materials to such action based upon the 15-6 investigation conducted by LTG Robert L. Caslen Jr. or any other governmental investigation, with regards to any individual that was the subject of such an adverse action in relation to the alleged leak of classified information in this case, including MAJ Dreher. See Discovery Request, paragraph 1(a).

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

k. A copy of any adverse administrative or UCMJ action, all supporting documentation, and any rebuttal materials to such action based upon the 15-6 investigation conducted by LTG Robert L. Caslen Jr. or any other governmental investigation, with regards to any individual that was the subject of such an adverse action in relation to the alleged leak of classified information in this case including CPT Freeborn. See Discovery Request, paragraph 1(a).

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

l. A copy of any adverse administrative or UCMJ action, all supporting documentation, and any rebuttal materials to such action based upon the 15-6 investigation conducted by LTG Robert L. Caslen Jr. or any other governmental investigation, with regards to any individual that was the

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subject of such an adverse action in relation to the alleged leak of classified information in this case, including ISG Usbeck. See Discovery Request, paragraph 1(a).

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

m. A copy of any adverse administrative or UCMJ action, all supporting documentation, and any rebuttal materials to such action based upon the 15-6 investigation conducted by LTG Robert L. Caslen Jr. or any other governmental investigation, with regards to any individual that was the subject of such an adverse action in relation to the alleged leak of classified information in this case, including CPT Cherepko. See Discovery Request, paragraph 1(a).

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

n. A copy of any adverse administrative or UCMJ action, all supporting documentation, and any rebuttal materials to such action based upon the 15-6 investigation conducted by LTG Robert L. Caslen Jr. or any other governmental investigation, with regards to any individual that was the subject of such an adverse action in relation to the alleged leak of classified information in this case, including CPT Lim. See Discovery Request, paragraph 1(a).

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

o. A copy of any adverse administrative or UCMJ action, all supporting documentation, and any rebuttal materials to such action based upon the 15-6 investigation conducted by LTG Robert L. Caslen Jr. or any other governmental investigation, with regards to any individual that was the subject of such an adverse action in relation to the alleged leak of classified information in this case, including CPT May. See Discovery Request, paragraph 1(a).

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

p. A copy of any adverse administrative or UCMJ action, all supporting documentation, and any rebuttal materials to such action based upon the 15-6 investigation conducted by LTG Robert L. Caslen Jr. or any other governmental investigation, with regards to any individual that was the subject of such an adverse action in relation to the alleged leak of classified information in this case, including CPT Martin. See Discovery Request, paragraph 1(a).

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SUBJECT: Response to Defense Request for Discovery, 13 October 2011 – United States v. PFC Bradley Manning

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

q. A copy of any adverse administrative or UCMJ action, all supporting documentation, and any rebuttal materials to such action based upon the 15-6 investigation conducted by LTG Robert L. Caslen Jr. or any other governmental investigation, with regards to any individual that was the subject of such an adverse action in relation to the alleged leak of classified information in this case, including 1LT Gaab. See Discovery Request, paragraph 1(a).

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

r. A copy of any adverse administrative or UCMJ action, all supporting documentation, and any rebuttal materials to such action based upon the 15-6 investigation conducted by LTG Robert L. Caslen Jr. or any other governmental investigation, with regards to any individual that was the subject of such an adverse action in relation to the alleged leak of classified information in this case, including 1LT Fields. See Discovery Request, paragraph 1(a).

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

s. A copy of any adverse administrative or UCMJ action, all supporting documentation, and any rebuttal materials to such action based upon the 15-6 investigation conducted by LTG Robert L. Caslen Jr. or any other governmental investigation, with regards to any individual that was the subject of such an adverse action in relation to the alleged leak of classified information in this case, including CW2 Ehrensmith. See Discovery Request, paragraph 1(a).

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

t. A copy of any adverse administrative or UCMJ action, all supporting documentation, and any rebuttal materials to such action based upon the 15-6 investigation conducted by LTG Robert L. Caslen Jr. or any other governmental investigation, with regards to any individual that was the subject of such an adverse action in relation to the alleged leak of classified information in this case, including CW2 Eastep. See Discovery Request, paragraph 1(a).

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

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u. A copy of any adverse administrative or UCMJ action, all supporting documentation, and any rebuttal materials to such action based upon the 15-6 investigation conducted by LTG Robert L. Caslen Jr. or any other governmental investigation, with regards to any individual that was the subject of such an adverse action in relation to the alleged leak of classified information in this case, including CW2 Lyons. See Discovery Request, paragraph 1(a).

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

v. A copy of any adverse administrative or UCMJ action, all supporting documentation, and any rebuttal materials to such action based upon the 15-6 investigation conducted by LTG Robert L. Caslen Jr. or any other governmental investigation, with regards to any individual that was the subject of such an adverse action in relation to the alleged leak of classified information in this case, including WO1 Balonek. See Discovery Request, paragraph 1(a).

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

w. A copy of any adverse administrative or UCMJ action, all supporting documentation, and any rebuttal materials to such action based upon the 15-6 investigation conducted by LTG Robert L. Caslen Jr. or any other governmental investigation, with regards to any individual that was the subject of such an adverse action in relation to the alleged leak of classified information in this case, including SFC Adkins. See Discovery Request, paragraph 1(a).

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

x. A copy of any adverse administrative or UCMJ action, all supporting documentation, and any rebuttal materials to such action based upon the 15-6 investigation conducted by LTG Robert L. Caslen Jr. or any other governmental investigation, with regards to any individual that was the subject of such an adverse action in relation to the alleged leak of classified information in this case, including SSG Mitchell. See Discovery Request, paragraph 1(a).

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

y. A copy of any adverse administrative or UCMJ action, all supporting documentation, and any rebuttal materials to such action based upon the 15-6 investigation conducted by LTG Robert L. Caslen Jr. or any other governmental investigation, with regards to any individual that was the

SUBJECT: Response to Defense Request for Discovery, 13 October 2011 – United States v. PFC Bradley Manning

subject of such an adverse action in relation to the alleged leak of classified information in this case, including SPC Padgett. *See* Discovery Request, paragraph 1(a).

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

z. A copy of any adverse administrative or UCMJ action, all supporting documentation, and any rebuttal materials to such action based upon the 15-6 investigation conducted by LTC Robert L. Caslen Jr. or any other governmental investigation, with regards to any individual that was the subject of such an adverse action in relation to the alleged leak of classified information in this case, including PFC Showman. *See* Discovery Request, paragraph 1(a).

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

aa. An inspection of all seized governmental computers from the Tactical Sensitive Compartmented Information Facility (T-SCIF) of Headquarters and Headquarters Company (HHC), 2nd Brigade Combat Team (BCT), 10 Mountain Division, Forward Operating Base (FOB) Hammer, Iraq for the presence of any and all unauthorized computer programs. *See* Discovery Request, paragraph 1(b).

RESPONSE: The United States has provided matters responsive to this request, including an Encase forensic image of all electronic storage devices, including hard drives, examined by law enforcement that were included in the forensic reports. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and a basis for its request.

bb. An inspection of all seized governmental computers from the Tactical Operations Center (TOC) of Headquarters and Headquarters Company (HHC), 2nd Brigade Combat Team (BCT), 10 Mountain Division, Forward Operating Base (FOB) Hammer, Iraq for the presence of any and all unauthorized computer programs. *See* Discovery Request, paragraph 1(b).

RESPONSE: The United States has provided matters responsive to this request, including an Encase forensic image of all electronic storage devices, including hard drives, examined by law enforcement that were included in the forensic reports. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and a basis for its request.

cc. Any *Brady* material in the government's possession. *See* Discovery Request, paragraph 1(c).

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RESPONSE: The United States understands its obligations under *Brady* and will comply with this requirement if the United States becomes aware of any *Brady* material.

dd. Any *Jencks* material in the government's possession. See Discovery Request, paragraph 1(c).

RESPONSE: The United States understands its obligations under *Jencks* and will comply with this requirement, if applicable.

ee. Any report or recommendation concerning the alleged leaks in this case by Mr. Russell Travers, National Security Staff's Senior Advisor for Information Access and Security Policy. See Discovery Request, paragraph 1(c)(i).

RESPONSE: The United States will not provide the requested information. The defense has failed to provide an adequate basis for its request. The United States will reconsider this request when provided with an adequate basis and an authority that obligates the United States to provide the requested information.

ff. Any and all documentation related to President Barack H. Obama's order for an investigation and a government wide-review of how agencies safeguard sensitive information. See Discovery Request, paragraph 1(c)(i).

RESPONSE: The United States will not provide the requested information. The defense has failed to provide an adequate basis for its request. The United States will reconsider this request when provided with an adequate basis and an authority that obligates the United States to provide the requested information.

gg. Any and all documents related to the steps the administration is considering regarding these leaks and the nature of the criminal investigation underway into how the documents were made public as referenced by former White House Press Secretary Robert Gibbs. See Discovery Request, paragraph 1(c)(i).

RESPONSE: The United States has provided matters responsive to this request, including all files of Department of Defense law enforcement and other investigations that the United States is aware of. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

hh. Any assessment given, or discussions concerning, the Wikileaks disclosures by any member of the government to President Obama. See Discovery Request, paragraph 1(c)(i).

RESPONSE: The United States presently has no knowledge of any such records, outside publicly made statements through press conferences or media organizations, equally

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SUBJECT: Response to Defense Request for Discovery, 13 October 2011 – United States v. PFC Bradley Manning

accessible by the defense. The defense is invited to renew its request with more specificity and an adequate basis for its request.

ii. Any email, report, assessment, directive, or discussion by President Obama to the Department of Defense, Department of State or Department of Justice. *See* Discovery Request, paragraph 1(c)(i).

RESPONSE: The United States presently has no knowledge of any such records, outside publicly made statements through press conferences or media organizations, equally accessible by the defense. The defense is invited to renew its request with more specificity and an adequate basis for its request.

jj. Any report or recommendation concerning the alleged leaks in this case by Chairman Chuck Hagel or any other member of the Intelligence Advisory Board. *See* Discovery Request, paragraph 1(c)(ii).

RESPONSE: The United States presently has no knowledge of any such records, outside publicly made statements through press conferences or media organizations, equally accessible by the defense. The defense is invited to renew its request with more specificity and an adequate basis for its request.

kk. Any report, damage assessment or recommendation by the Wikileaks Task Force or any other CIA member concerning the alleged leak in this case. Any internal or external memorandums addressing the investigation of Wikileaks, PFC Bradley Manning or the nature of the Office of Security's investigation into these matters. *See* Discovery Request, paragraph 1(c)(iii).

RESPONSE: The United States will provide a response to this request no later than 3 February 2012.

ll. All forensic results and investigative reports by the Department of Defense regarding the information obtained by Wikileaks. *See* Discovery Request, paragraph 1(c)(iv).

RESPONSE: The United States has provided all matters requested that are in its possession, including multiple Army Regulation 15-6 investigations conducted by the Department of Defense. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

mm. The results of any joint investigation with the FBI as referenced by Former Secretary of Defense Robert Gates. *See* Discovery Request, paragraph 1(c)(iv).

RESPONSE: The United States will not provide the requested information. The defense has failed to provide an adequate basis for its request. The United States will reconsider

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this request when provided with an adequate basis and an authority that obligates the United States to provide the requested information.

nn. Any specific damage assessment by the Department of Defense regarding the disclosure of classified documents and videos, the subject of this case, by Wikileaks, specifically any report by the IRTF that was responsible for leading a comprehensive DOD review of classified documents obtained by the Wikileaks website and any other associated materials. *See* Discovery Request, paragraph 1(c)(iv).

RESPONSE: The United States will provide a response to this request no later than 3 February 2012.

oo. Any and all documentation related to the Department of Justice investigation into the alleged leaks by Wikileaks as referenced by Attorney General of the United States Eric Holder. *See* Discovery Request, paragraph 1(c)(v).

RESPONSE: The United States has provided matters responsive to this request, including all grand jury information from the Eastern District of Virginia that is in its possession and that the United States has authority to disclose. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

pp. Any and all documentation relating to a review of the alleged leaks in this case by the Department of State regarding the disclosure of diplomatic cables, the subject of this case, by Wikileaks. *See* Discovery Request, paragraph 1(c)(vi).

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

qq. Any specific damage assessment by the Department of State regarding the disclosure of diplomatic cables, the subject of this case, by Wikileaks. *See* Discovery Request, paragraph 1(c)(vi).

RESPONSE: The United States will provide a response to this request no later than 3 February 2012.

rr. Any and all documentation relating to any review or damage assessment conducted by ODNI or in cooperation with any other government agency. *See* Discovery Request, paragraph 1(c)(vii).

RESPONSE: The United States will provide a response to this request no later than 3 February 2012.

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ss. Any and all documents relating to any task force or other governmental intelligence agency review of the various alleged leaks in this case to include any damage assessment based upon the alleged leaks. *See* Discovery Request, paragraph 1(c)(viii).

RESPONSE: The United States will provide a response to this request no later than 3 February 2012.

tt. Any and all documents relating to any task force or other governmental intelligence agency review of the various alleged leaks in this case to include any corrective action taken by the USG due to the alleged leaks. *See* Discovery Request, paragraph 1(c)(viii).

RESPONSE: The United States will not provide the requested information. The defense has failed to provide an adequate basis for its request. The United States will reconsider this request when provided with an adequate basis and an authority that obligates the United States to provide the requested information.

uu. Results or any inquiry and testimony taken by House of Representative oversight committee led by Representative Darrell Issa, which discussed the action of Wikileaks, Attorney General Eric Holder, and the investigation of PFC Manning. *See* Discovery Request, paragraph 1(c)(ix).

RESPONSE: The United States has no knowledge of any such records, outside publicly made statements through press conferences or media organizations, equally accessible by the defense. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

vv. Copy of the Preliminary Inquiry Report, as required under DOD 5105.21-M-1. *See* Discovery Request, paragraph 1(d).

RESPONSE: The United States presently has no knowledge of any such records. The defense is invited to renew its request with more specificity and an adequate basis for its request.

ww. Copy of the Damage Assessment of Compromised Information, as required under DOD 5105.21-M-1. *See* Discovery Request, paragraph 1(e).

RESPONSE: The United States presently has no knowledge of any such records. The defense is invited to renew its request with more specificity and an adequate basis for its request.

xx. Copy of the final security violation investigation report submitted to the SSO, as required under DOD 5105.21-M-1. *See* Discovery Request, paragraph 1(f).

RESPONSE: The United States presently has no knowledge of any such records. The defense is invited to renew its request with more specificity and an adequate basis for its request.

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yy. Copy of all SCI security management and self-inspection reports for the T-SCIF of HHC, 2nd BCT, 10 Mountain Division, FOB Hammer, Iraq. See Discovery Request, paragraph 1(g).

RESPONSE: The United States presently has no knowledge of any such records. The defense is invited to renew its request with more specificity and an adequate basis for its request.

3. The United States understands its continuing discovery obligation and acknowledges its requirements under Article 46, UCMJ, the Rules for Courts-Martial, and relevant case law.



ASHDEN FEIN
CPT, JA
Trial Counsel



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
U.S. ARMY MILITARY DISTRICT OF WASHINGTON
210 A STREET
FORT LESLEY J. MCNAIR, DC 20319-5013

ANJA-CL

27 January 2012

MEMORANDUM FOR Mr. David E. Coombs, Civilian Defense Counsel

SUBJECT: Response to Defense Request for Discovery, 15 November 2011 – United States
PFC Bradley Manning

1. The below responses to the defense discovery request account for the ongoing national security concerns of this case, the ongoing law enforcement investigation(s), and comply with the limitations of applicable Executive Orders.

2. Discovery Response.

a. Whether any NIPR or SIPR computer within 2d BCT T-SCIF or Supply Annex required an end-user to have their ID CAC Card in the computer. See Discovery Request, paragraph 2(a).

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

b. The required log-in procedure for use of the HP laptop, touch smart TS2, serial number CNF 8492K3S. See Discovery Request, paragraph 2(b).

RESPONSE: The United States has provided all matters requested that are in its possession. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

c. All NIPR and SIPR logs for any computer within the 2d BCT T-SCIF from 1 November 2009 to 27 May 2010. See Discovery Request, paragraph 2(c).

RESPONSE: The United States has provided matters responsive to this request, including an Encase forensic image of all electronic storage devices, including hard drives, acquired by law enforcement that were included in the forensic reports. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and a basis for its request.

d. An Encase forensic image of any computer seized by the government. See Discovery Request, paragraph 2(d).

RESPONSE: The United States has provided matters responsive to this request, including an Encase forensic image of all electronic storage devices, including hard drives,

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SUBJECT: Response to Defense Request for Discovery, 15 November 2011 – United States v. PFC Bradley Manning

examined by law enforcement that were included in the forensic reports. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and a basis for its request.

e. All other information relied upon by the government to claim information leaked to Wikileaks was obtained by any terrorist group such as Al-Qaeda or HIG. See Discovery Request, paragraph 2(d).

RESPONSE: The United States has provided all matters requested that are in its possession and that the United States has authority to disclose. The defense is invited to renew its request with more specificity and a basis for its request.

f. A current curriculum vitae for each forensic expert who has worked on this case for the government. See Discovery Request, paragraph 2(e).

RESPONSE: The United States has provided all matters requested that are in its possession. The defense is invited to contact SAC Kenneth King at (571) 305-4462 or (571) 480-0460 for additional information.

g. Any classification review for documents related to Specification 8 of Charge II. See Discovery Request, paragraph 2(f).

RESPONSE: The United States has provided all matters requested that are in its possession. See BATES 00378646. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

h. Any classification review for documents related to Specification 9 of Charge II. See Discovery Request, paragraph 2(f).

RESPONSE: The United States has provided all matters requested that are in its possession. See BATES 00378646. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

i. Any damage assessment for documents related to Specification 8 of Charge II. See Discovery Request, paragraph 2(f).

RESPONSE: The United States will provide a response to this request no later than 3 February 2012.

j. Any damage assessment for documents related to Specification 9 of Charge II. See Discovery Request, paragraph 2(f).

RESPONSE: The United States will provide a response to this request no later than 3 February 2012.

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k. Any classification review for the document related to Specification 15 of Charge II. *See* Discovery Request, paragraph 2(g).

RESPONSE: The United States has provided all matters requested that are in its possession. *See* BATES 00378148. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

l. Any damage assessment for the document related to Specification 15 of Charge II. *See* Discovery Request, paragraph 2(g).

RESPONSE: The United States will provide a response to this request no later than 3 February 2012.

3. The United States understands its continuing discovery obligation and acknowledges its requirements under Article 46, UCMJ, the Rules for Courts-Martial, and relevant case law.

ASHLEIGH FEIN
OF ANJA
Trial Counsel



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
U.S. ARMY MILITARY DISTRICT OF WASHINGTON
210 A STREET
FORT LESLEY J. MCNAIR, DC 20319-5013

ANJA-CL

27 January 2012

MEMORANDUM FOR Mr. David E. Coombs, Civilian Defense Counsel

SUBJECT: Response to Defense Request for Discovery, 16 November 2011 – United States
PFC Bradley Manning

1. The below responses to the defense discovery request account for the ongoing national security concerns of this case, the ongoing law enforcement investigation(s), and comply with the limitations of applicable Executive Orders.

2. Discovery Response.

a. An EnCase forensic image of any computer seized by the government and all other information relied upon by the government to claim information alleged to have been disclosed in this case was in the possession of an unauthorized individual (representative of Wikileaks) in December of 2009. See Discovery Request, paragraph 2(a).

RESPONSE: The United States has provided matters responsive to this request, including an Encase forensic image of all electronic storage devices, including hard drives, examined by law enforcement that were included in the forensic reports. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and a basis for its request.

b. Any damage assessment or review completed in this case either by or with the assistance of DIA. See Discovery Request, paragraph 2(b).

RESPONSE: The United States will provide a response to this request no later than 3 February 2012.

c. Any damage assessment or review completed in this case either by or with the assistance of the Office of National Counterintelligence Executive. See Discovery Request, paragraph 2(b).

RESPONSE: The United States will provide a response to this request no later than 3 February 2012.

d. Any damage assessment or review completed in this case either by or with the assistance of any government agency. See Discovery Request, paragraph 2(b).

RESPONSE: The United States will provide a response to this request no later than 3 February 2012.

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SUBJECT: Response to Defense Request for Discovery, 16 November 2011 – United States v. PFC Bradley Manning

3. The United States understands its continuing discovery obligation and acknowledges its requirements under Article 46, UCMJ, the Rules for Courts-Martial, and relevant case law.



ASHDEN FEIN
CPT, JA
Trial Counsel

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DEPARTMENT OF THE ARMY
U.S. ARMY MILITARY DISTRICT OF WASHINGTON
210 A STREET
FORT LESLEY J. MCNAIR, DC 20319-5013

ANJA-CL

27 January 2012

MEMORANDUM FOR Mr. David E. Coombs, Civilian Defense Counsel

SUBJECT: Response to Defense Request for Discovery, 20 January 2012 – United States – EC
Bradley Manning

1. The below responses to the defense discovery request account for the ongoing national security concerns of this case, the ongoing law enforcement investigation(s), and comply with the limitations of applicable Executive Orders.

2. Discovery Response.

a. Complete contact information for Mr. Robert E. Buz, USCYBERCOM Chief Classification Advisory Officer. *See* Discovery Request, paragraph 2(a).

RESPONSE: The United States will not provide the requested information. The defense has failed to provide any basis for its request. The defense is invited to renew its request with more specificity and an adequate basis for its request.

b. Complete contact information for Mr. Patrick F. Kennedy, Under Secretary of State for Management. *See* Discovery Request, paragraph 2(b).

RESPONSE: The United States will not provide the requested information. The defense has failed to provide any basis for its request. The defense is invited to renew its request with more specificity and an adequate basis for its request.

c. Complete contact information for Mr. Robert Roland. *See* Discovery Request, paragraph 2(c).

RESPONSE: The United States will not provide the requested information. The defense has failed to provide any basis for its request. The defense is invited to renew its request with more specificity and an adequate basis for its request.

d. Complete contact information for the individual that completed the Classification Review for the item charged in Specification 15 of Charge II. The Defense also requests a copy of the Classification Review for the item charged in Specification 15 of Charge II. *See* Discovery Request, paragraph 2(d).

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RESPONSE: The United States will not provide the requested contact information. The defense has failed to provide any basis for its request. The defense is invited to renew its request with more specificity and an adequate basis for its request.

3. Response to Defense Questions.

a. Does the Government possess any report, damage assessment or recommendation by the WikiLeaks Task Force or any other CIA member concerning the alleged leaks in this case? If yes, please indicate why these items have not been provided to the Defense. If no, please indicate why the Government has failed to secure these items. See Discovery Request, paragraph 3(a).

RESPONSE: The United States will provide a response to this request no later than 3 February 2012.

b. Does the Government possess any report, damage assessment, or recommendation as a result of any joint investigation with the Federal Bureau of Investigation (FBI) or any other governmental agency concerning the alleged leaks in this case? If yes, please indicate why these items have not been provided to the Defense. If no, please indicate why the Government has failed to secure these items. See Discovery Request, paragraph 3(b).

RESPONSE: The United States will provide a response to this request no later than 3 February 2012.

c. Does the Government possess any report, damage assessment, or recommendation by the Information Review Task Force (IRTF) concerning the alleged leaks in this case? If yes, please indicate why these items have not been provided to the Defense. If no, please indicate why the Government has failed to secure these items. See Discovery Request, paragraph 3(c).

RESPONSE: The United States will provide a response to this request no later than 3 February 2012.

d. Does the Government possess any report, damage assessment, or recommendation by the Department of Justice concerning the alleged leaks in this case? If yes, please indicate why these items have not been provided to the Defense. If no, please indicate why the Government has failed to secure these items. See Discovery Request, paragraph 3(d).

RESPONSE: The United States will provide a response to this request no later than 3 February 2012.

e. Does the Government possess any report, damage assessment, or recommendation by the Department of State concerning the alleged leaks in this case? If yes, please indicate why these items have not been provided to the Defense. If no, please indicate why the Government has failed to secure these items. See Discovery Request, paragraph 3(e).

ANJA-CL

SUBJECT: Response to Defense Request for Discovery, 20 January 2012 – United States v. PFC Bradley Manning

RESPONSE: The United States will provide a response to this request no later than 3 February 2012.

f. Does the Government possess any report, damage assessment, or recommendation by the Office of the Director of National Intelligence concerning the alleged leaks in this case? If yes, please indicate why these items have not been provided to the Defense. If no, please indicate why the Government has failed to secure these items. See Discovery Request, paragraph 3(f).

RESPONSE: The United States will provide a response to this request no later than 3 February 2012.

g. Does the Government possess any report, damage assessment, or recommendation by the Defense Intelligence Agency concerning the alleged leaks in this case? If yes, please indicate why these items have not been provided to the Defense. If no, please indicate why the Government has failed to secure these items. See Discovery Request, paragraph 3(g).

RESPONSE: The United States will provide a response to this request no later than 3 February 2012.

h. Does the Government possess any report, damage assessment, or recommendation by the Office of the National Counterintelligence Executive concerning the alleged leaks in this case? If yes, please indicate why these items have not been provided to the Defense. If no, please indicate why the Government has failed to secure these items. See Discovery Request, paragraph 3(h).

RESPONSE: The United States will provide a response to this request no later than 3 February 2012.

4. The United States understands its continuing discovery obligation and acknowledges its requirements under Article 46, UCMJ, the Rules for Courts-Martial, and relevant case law.



ASHDEN FEIN
CPT, JA
Trial Counsel

Attachment N



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
U.S. ARMY MILITARY DISTRICT OF WASHINGTON
210 A STREET
FORT LESLEY J. MCNAIR, DC 20319-5013

ANJA-CL

31 January 2012

MEMORANDUM FOR Mr. David E. Coombs, Civilian Defense Counsel

SUBJECT: Response to Defense Request for Discovery – United States v. PFC Bradley Manning

1. The below responses to the defense discovery request account for the ongoing national security concerns of this case, the ongoing law enforcement investigation(s), and comply with the limitations of applicable Executive Orders.

2. Discovery Response.

a. All damage assessments conducted by Original Classification Authorities (OCAs). *See* Discovery Request, 1 November 2010.

RESPONSE: The United States will not provide the requested information. The defense has failed to provide an adequate basis for its request. The defense is invited to renew its request with more specificity and an adequate basis for its request.

b. Any specific damage assessment by the Department of State regarding the disclosures of the diplomatic cables by Wikileaks. *See* Discovery Request, 8 December 2010, paragraph 2(b).

RESPONSE: The United States will not provide the requested information. The defense has failed to provide an adequate basis for its request. The defense is invited to renew its request with more specificity and an adequate basis for its request.

c. Any specific damage assessment by the Department of Defense regarding the disclosure of classified documents and videos, the subject of this case, by Wikileaks. *See* Discovery Request, 8 December 2010, paragraph 2(c).

RESPONSE: The United States will not provide the requested information. The defense has failed to provide an adequate basis for its request. The defense is invited to renew its request with more specificity and an adequate basis for its request.

d. Access to all classified information that the government intends to use in this case. To include any damage assessment or information review conducted by any governmental agency or at the direction of a governmental agency. *See* Discovery Request, 16 February 2011, paragraph 2(d).

RESPONSE: The United States has provided defense access to all classified information it intends to use in this case and will continue to comply with this request.

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SUBJECT: Response to Defense Request for Discovery – United States v. PFC Bradley Manning

e. Any and all documents (sworn or signed statements, photographs, emails, etc.), tangible items (books, papers, etc.), and reports (investigative summaries, damage assessments, Original Classification Authority (OCA) determinations, etc.) conducted by the United States Army. See Discovery Request, 13 May 2011, paragraph 3.

RESPONSE: The United States has provided three Army Regulation 15-6 investigations and the CID case file. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

f. Any and all documents (sworn or signed statements, photographs, emails, etc.), tangible items (books, papers, etc.), and reports (investigative summaries, damage assessments, Original Classification Authority (OCA) determinations, etc.) conducted by the Department of Defense. See Discovery Request, 13 May 2011, paragraph 3.

RESPONSE: The United States has provided three Army Regulation 15-6 investigations and the CID case file. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

g. Any and all documents (sworn or signed statements, photographs, emails, etc.), tangible items (books, papers, etc.), and reports (investigative summaries, damage assessments, Original Classification Authority (OCA) determinations, etc.) conducted by the Department of Justice. See Discovery Request, 13 May 2011, paragraph 3.

RESPONSE: The United States has provided all grand jury information that is in its possession and that the United States has authority to disclose. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

h. Any and all documents (sworn or signed statements, photographs, emails, etc.), tangible items (books, papers, etc.), and reports (investigative summaries, damage assessments, Original Classification Authority (OCA) determinations, etc.) conducted by the National Security Agency. See Discovery Request, 13 May 2011, paragraph 3.

RESPONSE: The United States will not provide the requested information. The defense has failed to provide an adequate basis for its request. The defense is invited to renew its request with more specificity and an adequate basis for its request.

i. Any and all documents (sworn or signed statements, photographs, emails, etc.), tangible items (books, papers, etc.), and reports (investigative summaries, damage assessments, Original Classification Authority (OCA) determinations, etc.) conducted by the Defense Intelligence Agency. See Discovery Request, 13 May 2011, paragraph 3.

RESPONSE: The United States will not provide the requested information. The defense has failed to provide an adequate basis for its request. The defense is invited to renew its request with more specificity and an adequate basis for its request.

SUBJECT: Response to Defense Request for Discovery – United States v. PFC Bradley Manning

j. Any and all documents (sworn or signed statements, photographs, emails, etc.), tangible items (books, papers, etc.), and reports (investigative summaries, damage assessments, Original Classification Authority (OCA) determinations, etc.) conducted by the Department of Homeland Security Office of Intelligence and Analysis. See Discovery Request, 13 May 2011, paragraph 3.

RESPONSE: The United States will not provide the requested information. The defense has failed to provide an adequate basis for its request. The defense is invited to renew its request with more specificity and an adequate basis for its request.

k. Any and all documents (sworn or signed statements, photographs, emails, etc.), tangible items (books, papers, etc.), and reports (investigative summaries, damage assessments, Original Classification Authority (OCA) determinations, etc.) conducted by the Central Intelligence Agency. See Discovery Request, 13 May 2011, paragraph 3.

RESPONSE: The United States provided two classification reviews. See BATES 00378148-00378175 and 00410623-00410634. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

l. Any and all documents (sworn or signed statements, photographs, emails, etc.), tangible items (books, papers, etc.), and reports (investigative summaries, damage assessments, Original Classification Authority (OCA) determinations, etc.) conducted by the Federal Bureau of Investigation. See Discovery Request, 13 May 2011, paragraph 3.

RESPONSE: The United States will not provide the requested information. The defense has failed to provide an adequate basis for its request. The defense is invited to renew its request with more specificity and an adequate basis for its request.

m. Any and all documents (sworn or signed statements, photographs, emails, etc.), tangible items (books, papers, etc.), and reports (investigative summaries, damage assessments, Original Classification Authority (OCA) determinations, etc.) conducted by the Bureau of Diplomatic Security. See Discovery Request, 13 May 2011, paragraph 3.

RESPONSE: The United States provided the Memorandum of Interview reports. See BATES 00408089-00408156. If information previously provided is not responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

n. Any report, damage assessment or recommendation by the Wikileaks Task Force or any other CIA member concerning the alleged leaks in this case. Any internal or external memorandums addressing the investigation of Wikileaks, PFC Bradley Manning or the nature of the Office of Security's investigation into these matters. See Discovery Request, 13 October 2011, paragraph 1(c)(iii).

RESPONSE: The United States provided two classification reviews. See BATES 00378148-00378175 and 00410623-00410634. If information previously provided is not

responsive, the defense is invited to renew its request with more specificity and an adequate basis for its request.

o. Any specific damage assessment by the Department of Defense regarding the disclosure of classified documents and videos, the subject of this case, by Wikileaks, specifically any report by the IRTF that was responsible for leading a comprehensive DOD review of classified documents obtained by the Wikileaks website and any other associated materials. *See* Discovery Request, 13 October 2011, paragraph 1(c)(iv).

RESPONSE: The United States will not provide the requested information. The defense has failed to provide an adequate basis for its request. The defense is invited to renew its request with more specificity and an adequate basis for its request.

p. Any specific damage assessment by the Department of State regarding the disclosure of diplomatic cables, the subject of this case, by Wikileaks. *See* Discovery Request, 13 October 2011, paragraph 1(c)(vi).

RESPONSE: The United States will not provide the requested information. The defense has failed to provide an adequate basis for its request. The defense is invited to renew its request with more specificity and an adequate basis for its request.

q. Any and all documentation relating to any review or damage assessment conducted by ODNI or in cooperation with any other government agency. *See* Discovery Request, 13 October 2011, paragraph 1(c)(vii).

RESPONSE: The United States will not provide the requested information. The defense has failed to provide an adequate basis for its request. The defense is invited to renew its request with more specificity and an adequate basis for its request.

r. Any and all documents relating to any task force or other governmental intelligence agency review of the various alleged leaks in this case to include any damage assessment based upon the alleged leaks. *See* Discovery Request, 13 October 2011, paragraph 1(c)(viii).

RESPONSE: The United States will not provide the requested information. The defense has failed to provide an adequate basis for its request. The defense is invited to renew its request with more specificity and an adequate basis for its request.

s. Any damage assessment for documents related to Specification 8 of Charge II. *See* Discovery Request, 15 November 2011, paragraph 2(f).

RESPONSE: The United States will not provide the requested information. The defense has failed to provide an adequate basis for its request. The defense is invited to renew its request with more specificity and an adequate basis for its request.

t. Any damage assessment for documents related to Specification 9 of Charge II. *See* Discovery Request, 15 November 2011, paragraph 2(f).

RESPONSE: The United States will not provide the requested information. The defense has failed to provide an adequate basis for its request. The defense is invited to renew its request with more specificity and an adequate basis for its request.

u. Any damage assessment for the document related to Specification 15 of Charge II. *See* Discovery Request, 15 November 2011, paragraph 2(g).

RESPONSE: The United States will not provide the requested information. The defense has failed to provide an adequate basis for its request. The defense is invited to renew its request with more specificity and an adequate basis for its request.

v. Any damage assessment or review completed in this case either by or with the assistance of DIA. *See* Discovery Request, 16 November 2011, paragraph 2(b).

RESPONSE: The United States will not provide the requested information. The defense has failed to provide an adequate basis for its request. The defense is invited to renew its request with more specificity and an adequate basis for its request.

w. Any damage assessment or review completed in this case either by or with the assistance of the Office of National Counterintelligence Executive. *See* Discovery Request, 16 November 2011, paragraph 2(b).

RESPONSE: The United States will not provide the requested information. The defense has failed to provide an adequate basis for its request. The defense is invited to renew its request with more specificity and an adequate basis for its request.

x. Any damage assessment or review completed in this case either by or with the assistance of any government agency. *See* Discovery Request, 16 November 2011, paragraph 2(b).

RESPONSE: The United States will not provide the requested information. The defense has failed to provide an adequate basis for its request. The defense is invited to renew its request with more specificity and an adequate basis for its request.

3. Response to Defense Questions.

a. Does the Government possess any report, damage assessment or recommendation by the WikiLeaks Task Force or any other CIA member concerning the alleged leaks in this case? If yes, please indicate why these items have not been provided to the Defense. If no, please indicate why the Government has failed to secure these items. *See* Discovery Request, 20 January 2012, paragraph 3(a).

RESPONSE: The United States produced the requested information that is in its possession and that it has authority to disclose, including two classification reviews. *See* BATES 00378148-00378175 and 00410623-00410634. If information previously provided is not

responsive, the United States will reconsider a renewed defense request with more specificity and an adequate basis.

b. Does the Government possess any report, damage assessment, or recommendation as a result of any joint investigation with the Federal Bureau of Investigation (FBI) or any other governmental agency concerning the alleged leaks in this case? If yes, please indicate why these items have not been provided to the Defense. If no, please indicate why the Government has failed to secure these items. See Discovery Request, 20 January 2012, paragraph 3(b).

RESPONSE: The United States will not provide the requested information. The defense has failed to provide an adequate basis for its request. The United States will reconsider a renewed defense request with more specificity and an adequate basis.

c. Does the Government possess any report, damage assessment, or recommendation by the Information Review Task Force (IRTF) concerning the alleged leaks in this case? If yes, please indicate why these items have not been provided to the Defense. If no, please indicate why the Government has failed to secure these items. See Discovery Request, 20 January 2012, paragraph 3(c).

RESPONSE: The United States will not provide the requested information. The defense has failed to provide an adequate basis for its request. The United States will reconsider a renewed defense request with more specificity and an adequate basis.

d. Does the Government possess any report, damage assessment, or recommendation by the Department of Justice concerning the alleged leaks in this case? If yes, please indicate why these items have not been provided to the Defense. If no, please indicate why the Government has failed to secure these items. See Discovery Request, 20 January 2012, paragraph 3(d).

RESPONSE: The United States has no knowledge of any report, damage assessment or recommendation by the Department of Justice, specifically main justice, that is discoverable and that concerns the alleged leaks in this case. The United States will reconsider a renewed defense request with more specificity and an adequate basis.

e. Does the Government possess any report, damage assessment, or recommendation by the Department of State concerning the alleged leaks in this case? If yes, please indicate why these items have not been provided to the Defense. If no, please indicate why the Government has failed to secure these items. See Discovery Request, 20 January 2012, paragraph 3(e).

RESPONSE: The United States produced the requested information that is in its possession and that it has authority to disclose, including a classification review. See BATES 00376903-00376953. If information previously provided is not responsive, the United States will reconsider a renewed defense request with more specificity and an adequate basis.

f. Does the Government possess any report, damage assessment, or recommendation by the Office of the Director of National Intelligence concerning the alleged leaks in this case? If yes, please indicate why these items have not been provided to the Defense. If no, please indicate

ANJA-CL

SUBJECT: Response to Defense Request for Discovery – United States v. PFC Bradley Manning

why the Government has failed to secure these items. See Discovery Request, 20 January 2012, paragraph 3(f).

RESPONSE: The United States produced the requested information that is in its possession and that it has authority to disclose, including a classification review. See BATES 00410761-00410770. If information previously provided is not responsive, the United States will reconsider a renewed defense request with more specificity and an adequate basis.

g. Does the Government possess any report, damage assessment, or recommendation by the Defense Intelligence Agency concerning the alleged leaks in this case? If yes, please indicate why these items have not been provided to the Defense. If no, please indicate why the Government has failed to secure these items. See Discovery Request, 20 January 2012, paragraph 3(g).

RESPONSE: The United States will not provide the requested information. The defense has failed to provide an adequate basis for its request. The United States will reconsider a renewed defense request with more specificity and an adequate basis.

h. Does the Government possess any report, damage assessment, or recommendation by the Office of the National Counterintelligence Executive concerning the alleged leaks in this case? If yes, please indicate why these items have not been provided to the Defense. If no, please indicate why the Government has failed to secure these items. See Discovery Request, 20 January 2012, paragraph 3(h).

RESPONSE: The United States will not provide the requested information. The defense has failed to provide an adequate basis for its request. The United States will reconsider a renewed defense request with more specificity and an adequate basis.

4. The United States understands its continuing discovery obligation and acknowledges its requirements under Article 46, UCMJ, the Rules for Courts-Martial, and relevant case law.


ASHDEN FEIN
CPT, JA
Trial Counsel

Appellate Exhibit 9
ordered sealed for Reason 7
(defense)
Military Judge's Seal Order
dated 23 February 2012
stored in the original Record
of Trial

IN THE UNITED STATES ARMY
FIRST JUDICIAL CIRCUIT

UNITED STATES)

v.)

MANNING, Bradley E., PFC)
U.S. Army, xxx-xx-)
HHC, U.S. Army Garrison)
Joint Base Myer-Henderson Hall)
Fort Myer, Virginia 22211)

SEAL ORDER

Ex Parte Filing

DATED: 23 Feb 12

1. Appellate Exhibit 1X contains information classified that was filed by the defense *ex parte* in support of its Motion to Compel Discovery. These records will be sealed in the record of trial in accordance with RCM 1103A.

2. Trial counsel shall ensure that the sealed exhibits are properly marked, including an annotation on each, that the material was sealed by order of the military judge prior to insertion into the original record of trial.

3. Sealed exhibits will not be opened or examined except for the following:


a. Prior to authentication of the record by the military judge, sealed materials may be examined upon order from the military judge based on good cause.

b. After authentication and prior to disposition of the record of trial pursuant to RCM 1111, sealed materials may be examined upon order issued from the military judge upon a showing of good cause at a post-trial Article 39(a) session directed by the Convening Authority.

c. Reviewing and appellate authorities may examine sealed matters when those authorities determine that such action is reasonably necessary to a proper fulfillment of their responsibilities under the Uniform Code of Military Justice, the Manual for Courts-Martial, governing directives, instructions, regulations, and applicable rules of professional responsibility.

4. No person authorized to examine sealed exhibits shall photocopy, photograph, duplicate, or disclose the contents of the sealed exhibit in the absence from an order by a military judge, the Judge Advocate General or designee, or an appellate court or other court of competent jurisdiction.

ORDERED, this the 23rd day of February 2012.


DENISE R. LIND
COL, JA
Chief Judge, 1st Judicial Circuit

APPELLATE EXHIBIT X

Page 1 of Page(s) 1

UNITED STATES

 \mathbf{y}_i

**MANNING, Bradley E., PFC
HHC, U.S. Army Garrison
Joint Base Myer-Henderson Hall
Fort Myer, Virginia 22211**

**PRETRIAL PUBLICITY ORDER
TO: COURT-MARTIAL
MEMBERS**

DATED: 24 February 2012

TO: All prospective court members for the above captioned court-martial.

1. This case has been referred to trial by general court-martial, and is expected to be scheduled for trial between May and August 2012. The trial is expected to last approximately 3 weeks. You will be contacted by the Office of the Staff Judge Advocate, U.S. Army Military District of Washington, if you are detailed to be a member for this case. This order is being provided to all persons who are presently identifiable as potential court members.
2. The Court finds that there has been pretrial publicity in the above-captioned court-martial to an extent that the following ORDER is necessary and proper in aid of its jurisdiction and in the interests of the fair administration of justice and due process of law for all parties.
3. **All prospective court members are ordered as follows:**

a. Due to prior publicity, and the probability for more publicity in the news media (newspapers, magazines, radio coverage, television coverage, internet news and editorial sources, including the "Early Bird," email etc.) about this case, you are **ORDERED** not to listen to, look at, or read any accounts of any incident involving the above-named accused or concerning allegations of compromise of classified information, or the ongoing issues involving the publication of alleged classified information by WikiLeaks. You may not consult any source, written or otherwise, involving the alleged incident. Should anyone attempt to discuss the case with you, or talk to you about your potential or actual participation as a court-martial member in this case, other than in open court, you must immediately forbid them from doing so, and then you must report the occurrence to me in court at your first opportunity.

b. A trial by court-martial includes the right of the accused to be tried by a court composed of members. Court members fulfill duties similar to those of civilian jurors. As a prospective court member of the court-martial that will try this case, it will be your duty to determine the guilt or innocence of the accused as to the charges upon which he is arraigned. Under the law, the accused is presumed to be innocent of the charges against him. Neither the fact that charges have been preferred against the accused nor the fact that charges have been referred to a court-martial for trial warrants any inference of guilt. Your determination of the guilt or innocence of the accused must be based solely upon the evidence and my instructions in the case as presented in open court. So, you must not read or otherwise expose yourself to information about the facts or issues in this case from sources outside of the court room. As a potential court member, you must keep an open mind and not form or express any opinion on the case

until all the evidence and the instructions on the applicable law are presented to you. You must not entertain or reach a conclusion as to the guilt or innocence of the accused until after all the evidence and instructions have been received in open court and you are in your closed session deliberations with other members.


c. The accused and the government are each entitled to a panel of court members who approach the case with an open mind and who are able to keep that open mind until they deliberate on the verdict. You should be as free as humanly possible from any preconceived ideas about the outcome of this case. Therefore, you are **ORDERED** that, from the date of receipt of this order until the trial is concluded (or until you are specifically advised by this court that this order no longer applies to you), you will not discuss the facts of this case, or any publicity concerning this case, with anyone, military or civilian. You may not discuss your prospective detailing to this court-martial with anyone, other than as required to inform your superiors of your duty status.

d. In the event you have already read, seen, or listened to any media accounts, publicity or other accounts concerning this case, or you inadvertently do so before the conclusion of this court-martial, you are advised that you have a legal duty to disclose that matter to me when asked to do so in open court. Also, in the event that you have already discussed (or listened to anyone else discuss) any matter related to this case, or inadvertently do so before the conclusion of the court-martial, you have the duty to disclose that to me in open court. You are advised that it is not an adverse reflection on you to be excused from duty as a court member; however, as a member of the military, you are required to follow the instructions in this order and not intentionally do anything contrary to the requirements of this order.

4. This order is not intended to limit or restrict any official purpose for remaining informed regarding matters related to this case or involving the publication of alleged classified information by WikiLeaks. If you are presently assigned to a position that requires your ongoing access to such information and you cannot reasonably remove yourself from that portion of your duties without adversely impacting you or your mission, then you shall obtain a memorandum from your supervisor documenting your continued requirement for access. Provide that memorandum to the Office of the Staff Judge Advocate, U.S. Army Military District of Washington and you are authorized continued access to this information for the limited purpose of performing your official military duties.

5. Trial counsel shall cause a copy of this order to be served through the Office of the Staff Judge Advocate, Military District of Washington, on each prospective primary and alternate member of the court. If the convening authority selects any additional primary or alternate member after the date of this order, the trial counsel shall immediately cause a copy of this order to be served on the new primary or alternate member. Trial counsel shall obtain and maintain a written receipt for such service, using the form provided along with this order, showing the date and time this order was served on each prospective member. A copy of the service shall be given to the defense. Trial counsel will attach the receipts for service to the record as an appellate exhibit.

ORDERED, this the 24th day of February 2012.


DENISE R. LIND
COL, JA
Chief Judge, 1st Judicial Circuit

_____ 2012

MEMORANDUM THRU Staff Judge Advocate, U.S. Army Military District of Washington,
210 A. Street, Fort Lesley J. McNair, DC 20319-5013

FOR Chief Judge, 1st Judicial Circuit, U.S. Army Legal Services Agency (Trial Judiciary), 9275
Gunston Road, Fort Belvoir, VA 22060

SUBJECT: Acknowledgement of Receipt of Court Order – United States v. PFC Bradley
Manning

1. At _____ hours, on _____ 2012, I received a copy of
the Court Order entitled "Pretrial Publicity Order to Court-Martial Members dated 24 February
2012.

2. I, _____, acknowledge that I have read and understood the
Pretrial Publicity Court Order.

Signed: _____

Printed Name: _____

Rank: _____

Williams, Patricia CIV JFHQ-NCR/MDW SJA

From: Fein, Ashden CPT USA JFHQ-NCR/MDW SJA
Sent: Monday, February 27, 2012 7:32 AM
To: Williams, Patricia CIV JFHQ-NCR/MDW SJA
Cc: Ford, Arthur D. WO1 USA JFHQ-NCR/MDW SJA
Subject: FW: Pretrial publicity order and acknowledgement. (UNCLASSIFIED)
Attachments: document2012-02-24-165453.pdf
Signed By: ashden.fein@jfhqncr.northcom.mil

Trish- did you get this?

-----Original Message-----

From: Lind, Denise R COL USARMY (US) [mailto:denise.r.lind.mil@mail.mil]
Sent: Friday, February 24, 2012 5:10 PM
To: Lind, Denise R COL USARMY (US); coombs@armycourt martialdefense.com; Fein, Ashden CPT MIL USA MDW
Cc: Kemkes, Matthew J MAJ USARMY (US); Bouchard, Paul R CPT USARMY (US); Santiago, Melissa S CW2 USARMY (US); Morrow III, JoDean, CPT USA JFHQ-NCR/MDW SJA; Overgaard, Angel M CPT USARMY (US); Whyte, Jeffrey H. CPT USA JFHQ-NCR/MDW SJA; Ford, Arthur D. WO1 USA JFHQ-NCR/MDW SJA; Fein, Ashden CPT USA JFHQ-NCR/MDW SJA; Jefferson, Dashawn MSG USARMY (US); Williams, Patricia CIV JFHQ-NCR/MDW SJA
Subject: Pretrial publicity order and acknowledgement. (UNCLASSIFIED)

Classification: UNCLASSIFIED

Caveats: NONE

Counsel,

1. Attached is the signed pre-trial publicity order. Trial counsel will serve it on potential members NLT 29 Feb 12 with continuing duty to serve additional potential primary/alternate members.
2. Ms. Williams, please add the order and acknowledgement as the next AE in line.
3. Lead counsel for both sides will confirm receipt of this email.
4. Mr. Coombs email below was sent just to me. I have cc'd all parties. I'm notified the government is resolving the blocked email issues.

D

Denise R. Lind
COL, JA
Chief Judge, 1st Judicial Circuit

(Mr. Coombs' email).

COL Lind,

The Defense does not have any objections to the Order. The Defense concurs with the Court's summary of the 802 session.

v/r
David
Sent from my Verizon Wireless BlackBerry

-----Original Message-----

From: Lind, Denise R COL USARMY (US)
Sent: Friday, February 24, 2012 12:17 PM
To: 'coombs@armycourt martialdefense.com'
Cc: Kemkes, Matthew J MAJ USARMY (US); Bouchard, Paul R CPT USARMY (US); Santiago, Melissa S CW2 USARMY (US); Morrow III, JoDean, CPT USA JFHQ-NCR/MDW SJA; Overgaard, Angel M CPT USARMY (US); Whyte, Jeffrey H CPT USARMY (US); Ford, Arthur D Jr WO1 USARMY (US); Fein, Ashden CPT USARMY (US); Jefferson, Dashawn MSG USARMY (US)
Subject: Post Arraignment RCM 802 conference, docketing, Publicity Order, security officer input (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Counsel,

1. Include MSG DaShawn Jefferson in any correspondence with me (cc'd). She is the 1st Circuit South Clerk of Court. Do not include Ms. Mary Jenkins.
2. Lead counsel for both sides will confirm receipt of emails from the Court.
3. The docket will reflect the following:

INSTRUCTIONS FOR PREPARING AND ARRANGING RECORD OF TRIAL

USE OF FORM - Use this form and MCM, 1984, Appendix 14, will be used by the trial counsel and the reporter as a guide to the preparation of the record of trial in general and special court-martial cases in which a verbatim record is prepared. Air Force uses this form and departmental instructions, as a guide to the preparation of the record of trial in general and special court-martial cases in which a summarized record is authorized.

Army and Navy use DD Form 491 for records of trial in general and special court-martial cases in which a summarized record is authorized. Inapplicable words of the printed text will be deleted.

COPIES - See MCM, 1984, RCM 1103(g). The convening authority may direct the preparation of additional copies.

ARRANGEMENT - When forwarded to the appropriate Judge Advocate General or for judge advocate review pursuant to Article 64(a), the record will be arranged and bound with allied papers in the sequence indicated below. Trial counsel is responsible for arranging the record as indicated, except that items 6, 7, and 15e will be inserted by the convening or reviewing authority, as appropriate, and items 10 and 14 will be inserted by either trial counsel or the convening or reviewing authority, whichever has custody of them.

1. Front cover and inside front cover (chronology sheet) of DD Form 490.
2. Judge advocate's review pursuant to Article 64(a), if any.
3. Request of accused for appellate defense counsel, or waiver/withdrawal of appellate rights, if applicable.
4. Briefs of counsel submitted after trial, if any (Article 38(c)).
5. DD Form 494, "Court-Martial Data Sheet."
6. Court-martial orders promulgating the result of trial as to each accused, in 10 copies when the record is verbatim and in 4 copies when it is summarized.
7. When required, signed recommendation of staff judge advocate or legal officer, in duplicate, together with all clemency papers, including clemency recommendations by court members.

8. Matters submitted by the accused pursuant to Article 60 (MCM, 1984, RCM 1105).

9. DD Form 458, "Charge Sheet" (unless included at the point of arraignment in the record).

10. Congressional inquiries and replies, if any.

11. DD Form 457, "Investigating Officer's Report," pursuant to Article 32, if such investigation was conducted, followed by any other papers which accompanied the charges when referred for trial, unless included in the record of trial proper.

12. Advice of staff judge advocate or legal officer, when prepared pursuant to Article 34 or otherwise.

13. Requests by counsel and action of the convening authority taken thereon (e.g., requests concerning delay, witnesses and depositions).

14. Records of former trials.

15. Record of trial in the following order:

- a. Errata sheet, if any.
- b. Index sheet with reverse side containing receipt of accused or defense counsel for copy of record or certificate in lieu of receipt.
- c. Record of proceedings in court, including Article 39(a) sessions, if any.
- d. Authentication sheet, followed by certificate of correction, if any.
- e. Action of convening authority and, if appropriate, action of officer exercising general court-martial jurisdiction.
- f. Exhibits admitted in evidence.
- g. Exhibits not received in evidence. The page of the record of trial where each exhibit was offered and rejected will be noted on the front of each exhibit.
- h. Appellate exhibits, such as proposed instructions, written offers of proof or preliminary evidence (real or documentary), and briefs of counsel submitted at trial.